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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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 550

### Pay Administration (General)

**AGENCY:** Office of Personnel Management.

**ACTION:** Technical amendment.

**SUMMARY:** This document contains a technical amendment to the final regulation that was published in the **Federal Register** on January 9, 1981. This amendment removes a reference to the CFR that is no longer available.

**DATES:** This amendment is effective on December 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Jacquline D. Carter, (202) 606–1973.

**SUPPLEMENTARY INFORMATION:** On Friday, December 10, 1999, (64 FR 69176) the Office of Personnel Management published a Final rule removing § 550.342 from 5 CFR Part 550. This amendment removes the reference ''§ 550.342'' from subpart C, § 550.311(a)(3).

### Regulatory Flexibility Act

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

### List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

Office of Personnel Management.

**Jacquline D. Carter,**

*Federal Register Liaison Officer.*

Accordingly, OPM is amending 5 CFR part 550 as follows:

## PART 550—PAY ADMINISTRATION (GENERAL)

1. The authority citation for subpart C of part 550 continues to read as follows:

**Authority:** 5 U.S.C. 5527, E.O. 10982, 3 CFR 1959–1963 Comp., p. 502.

**§ 550.311 [Amended]**

2. In § 550.311 paragraph (a) (3), remove the first ''§ '', and the phrase ''and 550.342''.

[FR Doc. 01–31903 Filed 12–28–01; 8:45 am]

BILLING CODE 6325–39–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 98–ANE–33–AD; Amendment 39–12575; AD 2001–26–11]**

**RIN 2120–AA64**

### Airworthiness Directives; Rolls-Royce, plc RB211 Trent 800 Series Turbofan Engines

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

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

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD) that is applicable to Rolls-Royce, plc RB211 Trent 800 series turbofan engines. That AD currently requires initial and repetitive ultrasonic inspections of low pressure compressor (LPC) fan blade roots for cracks, and replacement, if necessary, with serviceable parts. This amendment requires initial inspections at modified thresholds and repetitive inspections at reduced intervals from the current AD using new LPC fan blade inspection criteria, and requires renewal of dry film lubricant on removed blades. This amendment is prompted by reports that an in-service engine experienced LPC fan blade root cracking at a lower life than previously forecast, and, the manufacturer's further investigation that has led to a better understanding of the causes of fan blade root cracking. The actions specified in this AD are intended to prevent LPC fan blade failure due to cracking, which could result in multiple fan blade release, uncontained engine failure, and possible damage to the airplane.

**DATES:** Effective January 30, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 30, 2002.

Comments for inclusion in the Rules Docket must be received on or before March 1, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–33–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. The service information referenced in this AD may be obtained from Rolls-Royce plc, Technical Publications Department, PO Box 31, Derby, England DE248BJ; telephone 44 1332 242424, fax, 1332 249936. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7744; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** On November 30, 2000, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 2000–24–26, Amendment 39–12033 (65 FR 77778, December 13, 2000), applicable to Rolls-Royce, plc RB211 Trent 875, RB211 Trent 877, RB211 Trent 884, RB211 Trent 892, and RB211 Trent 892B series turbofan engines, to require initial and repetitive ultrasonic inspections of low pressure compressor (LPC) fan blade roots for cracks, and replacement, if necessary, with serviceable parts. This AD requires initial inspections at modified thresholds and repetitive

inspections at reduced intervals from the current AD using new LPC fan blade inspection criteria, and requires renewal of dry film lubricant on removed blades.

Since AD 2000–24–26 was issued, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), advises that an in-service engine experienced LPC fan blade root cracking at a lower life than previously forecast. The manufacturer's analysis of this new event has produced an improved understanding of the relationship between engine climb and takeoff speeds, and their effect on the crack initiation mechanism. These changes are the result of an improved understanding of the crack propagation mechanism and the latest service operational data.

**Manufacturer's Service Information**

Rolls-Royce, plc has issued Service Bulletin (SB) No. RB.211–72-C445, Revision 7, dated May 10, 2001, that specifies initial inspections at modified thresholds and repetitive inspections at reduced intervals from the current AD using new LPC fan blade inspection criteria, and requires renewal of dry film lubricant on removed blades. The CAA classified this service bulletin as mandatory and issued AD 003–04–98, dated May 10, 2001, in order to assure the airworthiness of these Rolls-Royce, plc engines in the UK.

**Bilateral Airworthiness Agreement**

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

**FAA's Determination of an Unsafe Condition and Required Actions**

Although none of these affected engine models are used on any airplanes that are registered in the United States, the possibility exists that the engine models could be used on airplanes that are registered in the United States in the future. Since an unsafe condition has been identified that is likely to exist or develop on other Rolls-Royce, plc RB211 Trent 875, RB211 Trent 877, RB211 Trent 884, RB211 Trent 892, and RB211 Trent 892B series turbofan engines of the same type design, this AD is being issued to prevent LPC fan blade failure, which could result in multiple fan blade release, uncontained engine failure, and possible damage to the airplane. This AD requires initial inspections at modified thresholds and repetitive inspections at reduced intervals from the current AD using new LPC fan blade inspection criteria, and requires renewal of dry film lubricant on removed blades. The actions are required to be done in accordance with the service bulletin described previously.

**Immediate Adoption of This AD**

Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–33–AD.'' The postcard will be date stamped and returned to the commenter.

**Regulatory Analysis**

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39–12033 (65 FR 77778 December 13, 2000) and by adding a new airworthiness directive, Amendment 39–12575, to read as follows:

**2001–26–11 Rolls-Royce, plc:** Amendment 39–12575. Docket No. 98–ANE–33–AD. Supersedes AD 2000–24–26, Amendment 39–12033.

**Applicability**

This airworthiness directive (AD) is applicable to Rolls-Royce plc (RR) RB211 Trent 875, RB211 Trent 877, RB211 Trent

884, RB211 Trent 892, and RB211 Trent 892B series turbofan engines, with low pressure compressor (LPC) fan blades, part numbers (P/N's) FK23750, FK25975, FK25548, or FK26757 installed. These engines are installed on, but not limited to Boeing 777 series airplanes.

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

**Compliance**

Compliance with this AD is required as indicated, unless already done.

To prevent LPC fan blade failure due to cracking, which could result in multiple fan blade release, uncontained engine failure, and possible damage to the airplane, do the following:

**Initial Inspection**

(a) Ultrasonically inspect the dovetail roots of LPC fan blades for cracks, in accordance with Appendix 1 (Method A) of RR Service Bulletin (SB) RB.211–72–C445, Revision 7, dated May 10, 2001, at the Initial Inspection Threshold cyclic times listed in the following Table 1 of this AD:

TABLE 1.—INSPECTION SCHEDULE

| Engine model (rating) | Initial inspection threshold, cycles-since-new (CSN) | Inspection intervals, cycles-since-last inspection (CSLI) | Part life threshold, CSN |
|---|---|---|---|
| (1) Trent 875 | 3,000 | 400 | 4,200 |
| (2) Trent 877 | 2,000 | 350 | 3,050 |
| (3) Trent 884 | 1,500 | 350 | 2,200 |
| (4) Trent 892 and Trent 892B | 900 | 200 | 1,300 |

**Dry Film Lubricant Renewal**

(b) Apply an approved dry film lubricant to LPC fan blade roots of blades inspected by Method A. Procedures for renewing the dry film lubricant on the blade roots are specified in the AMM task 72–31–11–300–801–R00 (Repair Scheme FRS A031 by air spray method only) or engine manual 72–31–11–R001 (Repair Scheme FRS A028). For purposes of this AD, approved lubricants are Dow Corning 321R (Rolls-Royce (RR) Omat item 4/52), Rocol Dry Moly Spray (RR Omat item 4/52), Molydag 709 (RR Omat item 444), or PL.237/R1 (RR Omat item 4/43).

**Repetitive Inspections**

(c) Except for the first inspection after exceeding the Part Life Threshold listed in Table 1 of this AD, ultrasonically inspect the dovetail roots of LPC fan blades for cracks and renew dry film lubricant when specified in accordance with Appendix 1 (Method A) or Appendix 2 (Method B) of RR SB RB.211–72–C445, Revision 7, dated May 10, 2001, and the Inspection Intervals listed Table 1 of this AD.

**First Inspection After Exceeding Part Life Threshold**

(d) For the first inspection after exceeding the Part Life Threshold listed in Table 1 of this AD, ultrasonically inspect the dovetail roots of LPC fan blades for cracks in accordance with Appendix 1 (Method A) of RR SB RB.211–72–C445, Revision 7, dated May 10, 2001. Thereafter, the repetitive inspections may be done using either Appendix 1 (Method A) or Appendix 2 (Method B), as specified in paragraph (c) of this AD.

**Fan Blades Exceeding Initial Inspection Threshold**

(e) For blades that have, on the effective date of the AD, more cycles since installation than the initial compliance criteria in Table 1, inspect blades within 100 cycles in service after the effective date of this AD.

**Engine Rating Changes**

(f) For an engine that has changed its rating, inspect fan blades at the correct cycle time as follows:

(1) From higher rating to lower rating, inspect fan blades before further flight, as specified in this AD and reinspect at the interval applicable to the lower rating.

(2) From lower rating to higher rating, inspect fan blades at intervals applicable to the higher rating.

**Method A Acceptance Criteria**

(g) For Method A, replace blades that do not meet the acceptance criteria in Appendix 1 of RR SB RB.211–72–C445, Revision 7, dated May 10, 2001.

**Method B Acceptance Criteria**

(h) For Method B, for blades that do not meet the acceptance criteria in Appendix 2 of RR SB RB.211–72–C445, Revision 7, dated May 10, 2001, remove blades and ultrasonically inspect the dovetail roots for cracks in accordance with Appendix 1 (Method A) of RR SB RB.211–72–C445, Revision 7, dated May 10, 2001.

**Alternative Methods of Compliance**

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

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

**Special Flight Permits**

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

**Documents That Have Been Incorporated by Reference**

(k) The inspection must be done in accordance with Rolls-Royce plc Service Bulletin(SB) No. RB.211–72–C445, Revision 7, dated May 10, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, Technical Publications Department, PO Box 31, Derby, England DE248BJ; telephone 44 1332 242424, fax, 1332 249936. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Civil Aviation Authority airworthiness directive AD 003–04–98, issued on May 10, 2001.

**Effective Date**

(l) This amendment becomes effective on January 30, 2002.

Issued in Burlington, Massachusetts, on December 17, 2001.

**Jay J. Pardee,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 01–31699 Filed 12–28–01; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 385**

**[Docket No. RM02–5–000; Order No. 623]**

## Amendment to Rules Governing Off-the-Record Communications; Final Rule

December 21, 2001.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is revising its regulations governing off-the-record communications. The revisions ensure that the regulations do not impede the Commission's ability to quickly address issues relating to national security which may arise within the context of pending proceedings and its ability to maintain the confidentiality of sensitive security-related information.

**EFFECTIVE DATE:** This final rule is effective December 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Moira Notargiacomo, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 208–1079.

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

### I. Background

The September 11, 2001 terrorist attacks have prompted the Commission to reexamine its rules governing prohibited off-the-record communications at 18 CFR 385.2201 (Rule 2201). Specifically, the Commission has determined that in the interest of national security, Rule 2201 should be amended so as not to impede the Commission from immediately addressing issues related to national security where that would require discussions, in particular with other government entities, off-the-record. The need to change Rule 2201 recently became apparent when the Commission was called upon to assess the national security implications of certificating an expansion to and reactivating the operations of the Cove Point LNG facilities in Calvert County, Maryland. *See* Cove Point LNG Limited Partnership, 97 FERC ¶ 61,181 (2001). In that situation, the rule frustrated the Commission's ability to talk to persons, including parties in the case, as quickly as desired, without violating the existing prohibition on off-the-record communications. As a result, the Commission convened a technical conference to which it invited all parties and non-party state and Federal agencies that share jurisdiction or regulatory responsibilities over security matters that could be implicated by the Commission's actions in the proceeding. *See* 97 FERC ¶ 61,834–35. Subsequently, a transcript of the conference was placed in the non-public decisional file in the case. Access to that transcript was limited to the parties, on the condition that they sign a non-disclosure agreement. *See* ''Notice to Parties,'' in Docket No. CP01–76, et al., issued November 21, 2001.

### II. Discussion

The communications dilemma which the Commission faced in the Cove Point proceeding was due in large part to the current structure of Rule 2201, which prohibits any off-the-record communication between a Commission decisional employee and any person outside the Commission on the merits of any issue in a contested on-the-record proceeding. *See* 18 CFR 385.2201(b). Rule 2201 exempts certain off-the-record communications from this prohibition, subject to disclosure and notice.[1] As relevant here, Rule 2201 exempts an off-the-record communication from anyone related to any emergency. *See* 18 CFR 385.2201(e)(1)(ii). The emergency exemption, however, was intended to cover events like earthquakes, floods, severe weather conditions, fires, or explosions that damage or threaten to damage FERC-regulated facilities, i.e. emergencies affecting a regulated entity's ability to deliver energy. *See* Regulations Governing Off-the-Record Communications, Order No. 607, FERC Stats. & Regs. ¶ 31,079 at 30,885 (Sept. 15, 1999). At that time, neither the Commission nor anyone commenting on the proposed rule contemplated the vulnerability of the nation's energy infrastructure to terrorist attacks as part of the concept of ''emergency'' in Rule 2201. Indeed, Order No. 607's requirement of prompt notice and disclosure of such off-the-record communications indicates that the Commission did not consider that some of the information could be sensitive. As a separate matter, Rule 2201 also exempts, subject to disclosure and notice, written communications from non-party members of Congress (*See* 18 CFR 385.2201(e)(1)(iv)) and any communications from a non-party Federal, state, local or Tribal agency over a matter which the Commission and the other agency shares jurisdiction (*See* 18 CFR 385.2201(e)(1)(v)).

Thus, as currently structured and as relevant here, Rule 2201 prohibits all off-the-record communications relating to emergencies with national security implications, oral off-the-record communications with non-party members of Congress, all off-the-record communications with State and Federal agencies with shared responsibilities and members of Congress who are parties in a proceeding, and all other persons, including licensees and certificate holders and their security personnel.

The Commission finds that the current scope of Rule 2201 is inadequate to enable it to carry out its licensing and other responsibilities under its organic statutes, to address possible breaches of national security through critical infrastructure vulnerabilities. In particular, we find that to the extent such circumstances require us to communicate with other government employees or anyone with whom we deem communication appropriate, we need to be able to do so without the restriction of the prohibition against off-the-record communications in Rule 2201. Therefore, we determine that Rule 2201 needs to be amended to treat all communications involving critical energy infrastructure matters as exempt communications, subject to a limited form of disclosure and notice. As explained below, while the communications may be with anyone, its disclosure will be limited to parties in a proceeding who sign non-disclosure statements. In our view, this amendment to Rule 2201 strikes the proper balance between maintaining the fairness of our proceedings and enabling us to protect sensitive information.

### III. Analyses of the Amendments to Rule 2201

As explained above, in the interests of national security, we will amend Rule 2201 in two respects. First, we will expand the exemptions to prohibited off-the-record communications by adding a new paragraph (viii) to 18 CFR 385.2201(e)(1), to permit any person to

[1] The notice and disclosure procedure works as follows. Any decisional employee who makes or receives a prohibited or an exempt off-the-record communication is obligated promptly to deliver to the Office of the Secretary (OSEC) a copy of the communication, if written, or a summary of the substance of any oral communication. Next, OSEC places the written communication or summary of an oral communication in the non-decisional record (if a prohibited communication) or in the decisional record (if an exempt communication). Every 14 days OSEC publishes a notice in the **Federal Register** identifying both types of communications, to which parties then have an opportunity to respond. *See* 18 CFR 385.2201 (f)–(h).

discuss off-the-record with the Commission and its decisional staff their concerns about any national security-related issue in a proceeding regarding a facility regulated by the Commission or a facility that provides Commission-regulated services. This exemption recognizes that the public interest favors a free flow of information involving the security of our nation, especially among Federal employees with a shared responsibility to protect our nation.

Second, we will amend the disclosure requirements under 18 CFR § 385.2201(g) by adding a new paragraph (3), which will treat national security-related communications as confidential, unless the Commission determines that such protection is unnecessary. Accordingly, this new paragraph requires that any such document, or the summary of the substance of any oral communication, be submitted to the Secretary and placed in the relevant non-public decisional file and made available only to parties to the proceeding in which the communications were made, subject to the parties' signing a non-disclosure agreement. Any responses to such off-the-record communications will also be placed in the non-public decisional file and held confidential. Should the Commission determine that the information is not sensitive national security information, it will place the information, if written, or a summary of it, if oral, in the public record. This amendment to the disclosure requirements protects sensitive security-related communications so that they do not compromise public safety. At the same time, the amendment ensures that such communications do not undermine the procedural rights of the parties or the integrity of the Commission's decisional record by allowing the parties to rebut the information and to discern the basis of the Commission's decision by viewing actual information obtained through off-the-record communications with any person and relied upon by the Commission in reaching its decision.

## IV. Regulatory Flexibility Act

The Regulatory Flexibility Act [2] requires rulemakings either to contain a description and analysis of the impact the rules will have on small entities or a certification that the rule will not have a substantial economic impact on a substantial number of small entities. The Commission certifies promulgating this rule does not represent a major Federal action having a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

## V. National Environmental Policy Act Analysis

The Commission concludes that promulgating this Final Rule does not represent a major Federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environment Policy Act (*see* 18 CFR Part 380). This rule is procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required. See 18 CFR 380.4(a)(1).

## VI. Paperwork Reduction Act Statement

The Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 109 Stat. 163 (1995)) and the Office of Management and Budget's (OMB's) regulations (5 CFR Part 1320) require that OMB approve certain information collection requirements imposed by agency rule. However, this rule contains no information collection requirements and therefore is not subject to OMB approval.

## VII. Administrative Procedure Act

Administrative Procedure Act (APA), 5 U.S.C. 551, *et seq.*, requires rulemakings to be published in the **Federal Register**. The APA generally mandates that an opportunity for comment be provided when an agency promulgates regulations. Notice and comment are not required, however, where a rule relates to (1) agency personnel or agency organization, procedure or practice or (2) when the ''agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 553 (b)(A) and (B). The Commission finds that notice and comment are unnecessary for this rulemaking because the rule relates to Commission's rules of practice and procedure. Furthermore, the September 11 terrorist attacks and concerns raised regarding the Cove Point LNG facilities indicate that it would be contrary to the public interest to delay implementing regulations which would protect the country's critical infrastructure to give notice and seek comment.

## VIII. Effective Date and Congressional Notification

The APA generally mandates that publication or service of a substantive rule not be made less than 30 days before its effective date. This waiting period is not required, however, for interpretative rules and statements of policy or as otherwise provided by the agency for good cause found. For the same reasons stated above, the Commission, therefore, finds good cause in accordance with 5 U.S.C. 553(d)(3) to make these rules effective upon less than 30 days' notice. This Final Rule, therefore, will be made effective upon publication in the **Federal Register**.

The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates. *See* 5 U.S.C. 801. That reporting requirement does not apply to this Final Rule because it does not substantially affect the rights or obligations of non-agency parties, and therefore falls within a statutory exception for rules relating to agency procedures or practices that do not substantially affect the rights or obligations of non-agency parties.[3]

## IX. Availability of Documents

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

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

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

—CIPS can be assessed using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and or/downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981.

[2] 5 U.S.C. 601–12 (1994).

[3] 5 U.S.C. 804(3)(C).

Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 18, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

Users assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help Line at (202) 208–2222 (E-mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

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

**List of Subjects in 18 CFR Part 385**

Administrative practice and procedure, Electric power, Penalties, Pipelines, and Reporting and recordkeeping requirements.

By the Commission.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

In consideration of the foregoing, the Commission amends part 385, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

## PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation continues to read as follows:

**Authority:** 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

**§ 385.2201 Rules governing off-the-record communications. (Rule 2201).**

* * * * *

2. In § 385.2201 paragraphs (e)(1)(viii) and (g)(3) are added to read as follows:

(e) *Exempt off-the-record communications.* (1) * * *

(viii) An off-the-record communication from any person related to any national security-related issue concerning a facility regulated by the Commission or a facility that provides Commission-regulated services.

* * * * *

(g) *Disclosure of exempt off-the-record communications.* * * *

(3) Any document, or a summary of the substance of any oral communications, obtained through an exempt off-the-record communication under paragraphs (e)(1)(viii) of this section, will be submitted promptly to the Secretary and placed in a non-public decisional file of the relevant Commission proceeding and made available to parties to the proceeding, subject to their signing a non-disclosure agreement. Responses will also be placed in the non-public decisional file and held confidential. If the Commission determines that the communication does not contain sensitive national security-related information, it will be placed in the decisional file.

* * * * *

[FR Doc. 01–32068 Filed 12–28–01; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF THE TREASURY

## Customs Service

## 19 CFR Parts 122 and 178

**[T.D. 02—01]**

**RIN 1515—AC99**

## Passenger and Crew Manifests Required for Passenger Flights in Foreign Air Transportation to the United States

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Interim rule; solicitation of comments.

**SUMMARY:** This document amends the Customs Regulations, on an interim basis, in order to implement a provision of the Aviation and Transportation Security Act which requires that each air carrier, foreign and domestic, operating a passenger flight in foreign air transportation to the United States electronically transmit to Customs in advance of arrival a passenger and crew manifest that contains certain specified information. The submission of this information to Customs is required for purposes of ensuring aviation safety and protecting national security.

**DATES:** Interim rule is effective December 31, 2001. Comments must be received on or before March 1, 2002.

**ADDRESSES:** Written comments may be addressed to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** For legal matters: Larry L. Burton, Office of Regulations and Rulings, 202–927–1287; For operational matters: James Jeffers, Office of Field Operations,202–927–4444.

**SUPPLEMENTARY INFORMATION:**

### Background

On November 19, 2001, the President signed into law the Aviation and Transportation Security Act (Act), Public Law 107–71. Section 115 of that law amended 49 U.S.C. 44909, to add a new paragraph (c) in order to provide that, not later than 60 days after the date of enactment of the Act, each air carrier, foreign and domestic, operating a passenger flight in foreign air transportation to the United States must electronically transmit to Customs a passenger and crew manifest containing certain information in advance of arrival. Under this statutory provision, the transmission of passenger and crew manifest information will be required even for flights where the passengers and crew have already been pre-inspected or pre-cleared at the foreign location for admission to the United States.

Specifically, under 49 U.S.C. 44909(c)(2)(A)-(E), for each passenger and crew manifest relating to a passenger flight in foreign air transportation to the United States, the following information is required to be submitted to Customs: The full name of each passenger and crew member; the date of birth and citizenship of each passenger and crew member; the gender of each passenger and crew member; the passport number and country of issuance of the passport of each passenger and crew member if a passport is required for travel; and the United States visa number or resident alien card number of each passenger and crew member, as applicable.

In addition, under 49 U.S.C. 44909(c)(2)(F), such other information concerning passenger and crew manifests may be required to be transmitted to Customs, as may be determined to be reasonably necessary to ensure aviation safety.

Moreover, the statute provides that the electronic transmission of a passenger and crew manifest required for a covered flight must be received by Customs in advance of the aircraft landing in the United States in such manner, time and form as Customs may prescribe (49 U.S.C. 44909(c)(4)).

### Passenger Manifest; Crew Manifest

This document amends the Customs Regulations to implement 49 U.S.C. 44909(c)(2)(A)-(E) in a new § 122.49a. This section requires air carriers, for each flight subject to the statute, to

transmit to Customs, by means of an electronic data interchange system that is approved by Customs, a passenger manifest and, by way of a separate transmission using the same system, a crew manifest. (The system currently in effect for this purpose is called the Advance Passenger Information System (APIS)). Furthermore, the air carrier must transmit each manifest so that the crew manifest is received by Customs electronically in advance of departure from the last foreign port or place, and the passenger manifest is received not later than 15 minutes after the departure of the aircraft from the last foreign port or place (after the wheels are up on the aircraft and the aircraft is directly en route to the United States). To distinguish the two manifests transmitted for a given flight, the crew manifest must have the alpha character ''C'' included in the transmission to denote that the manifest information pertains to the crew members for the flight.

**Required Data Elements for the Manifests**

The following data elements comprising the passenger and crew manifests for each flight under 49 U.S.C. 44909(c) must be electronically transmitted to Customs:

(1) The International Air Transport Authority (IATA) airline code; the flight number (followed by the alpha character ''C'' in the case of the message transmitting the crew manifest for the flight); the departure location IATA code; the U.S. arrival location(s) IATA code(s); the date of flight arrival; and whether each passenger and crew member on the flight is destined for the U.S. or in transit through the U.S.;

(2) The full name of each passenger and crew member; the date of birth and citizenship of each passenger and crew member; the gender of each passenger and crew member; the passport number and country of issuance of the passport of each passenger and crew member if required for travel; and the United States visa number or resident alien card number of each passenger and crew member, as applicable; and

(3) The foreign airport where each passenger began his air transportation to the United States; for each passenger and crew member destined for the United States, the airport in the United States where the passenger and crew member will process through Customs and Immigration formalities; and for each passenger and crew member transiting through the United States and not clearing through Customs and Immigration formalities, the foreign airport of final destination for the passenger and crew member.

Many of the data elements contained in item ''2'' above describing each passenger and crew member on a flight are contained in travel documents that air carriers review prior to the boarding of the passenger. Air carriers are to transmit the data elements listed in item ''2'' above, by transmitting electronically to Customs one, and only one, travel document, selected in the following order of preference: U.S. Alien Registration Card; U.S. Border Crossing Card; U.S. non-immigrant visa; a U.S. Refugee Travel Document or Re-Entry Permit; U.S. Passport; or non-U.S. passport.

Even though Customs recognizes that the travel document information being transmitted to Customs by the air carrier may not contain all the informational elements required by the statute and set forth in the regulations, Customs' timely receipt of the electronic transmission of the preferred travel document pertaining to each passenger or crew member for a particular flight will at the present time be considered as constituting full compliance with the informational requirements of 49 U.S.C. 44909(c)(2)(A)-(E). Air carriers will be required to transmit any informational elements required by the statute and this regulation which are not contained in transmitted travel documents by a date that will be announced in a future **Federal Register** document.

It is further observed that the data elements contained in passenger and crew manifests for flights subject to 49 U.S.C. 44909(c)(1) that are received by Customs electronically may, upon request, be shared with other Federal agencies for the purpose of protecting national security (49 U.S.C. 44909(c)(5)).

Lastly, it is noted that the requirement in 49 U.S.C. 44909(c)(3) that carriers make passenger name record information available to Customs upon request will be the subject of a separate document published in the **Federal Register**.

**Comments**

Before adopting this interim regulation as a final rule, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

**Administrative Procedure Act, Executive Order 12866 and the Regulatory Flexibility Act**

This interim regulation has been determined to be critically necessary for purposes of ensuring aviation safety and protecting national security. Further, Congress has directed air carriers to comply no later than 60 days from enactment of the Aviation and Transportation Security Act. For these reasons, Customs finds that good cause exists in this case for dispensing with the notice and public comment procedures of the Administrative Procedure Act (5 U.S.C. 553) as being contrary to the public interest pursuant to 5 U.S.C. 553(b)(B), and, in this connection, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Because this document is not subject to the requirements of 5 U.S.C. 553, as noted, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nor does the interim regulation result in a ''significant regulatory action'' under E.O. 12866.

**Paperwork Reduction Act**

This interim regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this interim regulation has been reviewed and, pending the receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1515–0232. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information required in this document is contained in § 122.49a. This information is required in connection with passenger flights in foreign air transportation to the United States. The likely respondents and/or recordkeepers are business organizations, specifically air carriers, including foreign air carriers.

*Estimated total annual reporting and/or recordkeeping burden:* 2,380 hours.

*Estimated average annual burden per respondent/recordkeeper:* .0028 hours.

*Estimated number of respondents and/or recordkeepers:* 200.

*Estimated annual frequency of responses:* 850,000.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229. Comments should be submitted within the same time frame that comments are due regarding the substance of the interim regulation.

Comments are invited on: (a) Whether the collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the 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 startup costs and costs of operations, maintenance, and purchase of services to provide information.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, is appropriately revised to make provision for this information collection.

**List of Subjects**

*19 CFR Part 122*

Air carriers, Aircraft, Airports, Air transportation, Customs duties and inspection, Entry procedure, Reporting and recordkeeping requirements, Security measures.

*19 CFR Part 178*

Administrative practice and procedure, Collections of information, Paperwork requirements, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

Parts 122 and 178, Customs Regulations (19 CFR parts 122 and 178), are amended as set forth below.

## PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read, and a specific sectional authority citation is added to read, as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

§ 122.49a also issued under 19 U.S.C. 1431 and 49 U.S.C. 44909(c).

2. Subpart E of part 122 is amended by adding § 122.49a to read as follows:

### § 122.49a Passenger and crew manifests.

(a) *General requirement.* Each air carrier, foreign and domestic, operating a passenger flight in foreign air transportation to the United States, including flights where the passengers and crew have already been pre-inspected or pre-cleared at the foreign location for admission to the United States, must transmit to Customs a passenger manifest and a crew manifest containing the information set forth in paragraph (c) of this section, as required by 49 U.S.C. 44909(c)(1). The electronic transmission of manifest information must be effected through an electronic data interchange system approved by Customs. This information must be transmitted to the U.S. Customs Data Center, Customs Headquarters.

(b) *Passenger and crew manifests separately transmitted; advance receipt by Customs.* For each flight subject to paragraph (a) of this section, the air carrier must separately transmit to Customs the passenger manifest and the crew manifest. The crew manifest must be received in advance of departure from the last foreign port or place. The passenger manifest must be received by Customs no later than 15 minutes after the flight has departed from the last foreign port or place (after the wheels are up on the aircraft and the aircraft is en route directly to the United States).

(c) *Information required*—(1) *Airline and flight information.* For each passenger manifest and crew manifest relating to a flight falling within the scope of paragraph (a) of this section, the following airline and flight information must be electronically transmitted to Customs: the airline IATA (International Air Transport Authority) code; the flight number (followed by the alpha character ''C'' in the case of the crew manifest for the flight); the departure location IATA code; the U.S. arrival location(s) IATA code(s); the date of flight arrival in the United States; and whether each passenger and crew member on the flight is destined for the U.S. or in transit through the U.S.

(2) *Identifying information for each passenger or crew member.* In the manner prescribed in paragraph (c)(3) of this section, for each passenger manifest and crew manifest, as applicable, that relates to a flight falling within the scope of paragraph (a) of this section, the following information that identifies each passenger and crew member on the flight must be electronically transmitted to Customs: The full name of each passenger and crew member; the date of birth and citizenship of each passenger and crew member; the gender of each passenger and crew member; the passport number and country of issuance of the passport of each passenger and crew member if a passport is required for travel; and the United States visa number or resident alien card number of each passenger and crew member, as applicable (49 U.S.C. 44909(c)(2)(A)–(E)).

(3) *Use of travel document to obtain data.* Air carriers are to provide the data elements set out in paragraph (c)(2) of this section that describe each passenger and crew member on a flight subject to paragraph (a) of this section by transmitting to Customs one, and only one, travel document per passenger or crew member, selected in the following order of preference: U.S. Alien Registration Card; U.S. Border Crossing Card; U.S. non-immigrant visa; U.S. Refugee Travel Document or Re-Entry Permit; U.S. Passport; or non-U.S. passport. Customs timely receipt of the electronic transmission of the preferred travel document pertaining to a passenger or crew member for a covered flight will be considered as constituting full compliance with the informational requirements of 49 U.S.C. 44909(c)(2)(A)–(E), subject to paragraph (c)(5) of this section.

(4) *Additional information required; travel itinerary of each passenger and crew member.* In addition, for each passenger manifest and crew manifest, as applicable, that relates to a flight falling within the scope of paragraph (a) of this section, air carriers are required to transmit for each passenger and crew member, the foreign airport where they began their air transportation to the United States. Also, for passengers and crew members destined for the United States, the air carrier must designate the airport in the United States where the passenger will be processed through Customs and Immigration formalities. Likewise, for passengers and crew members that are transiting through the United States and not clearing Customs and Immigration formalities, the air carrier bringing them into the United States must transmit the foreign airport of ultimate destination.

(5) *Receipt of all required data elements.* Air carriers will be required to transmit any informational elements required by paragraph (c) of this section which are not contained in the transmitted travel documents by a date

that will be announced in the **Federal Register**.

(d) *Carrier responsibility for comparing information collected with travel document.* The carrier collecting the information described in paragraph (c)(2) of this section is responsible for comparing this information with the related travel document under paragraph (c)(3) of this section, in order to ensure that the information is correct, that the document appears to be valid for travel to the United States, and that the passenger or crew member, as applicable, is the person to whom the travel document was issued.

(e) *Sharing of manifest information with other Federal agencies.* Information contained in passenger and crew manifests for flights subject to paragraph (a) of this section (49 U.S.C. 44909(c)(1)) that is received by Customs electronically may, upon request, be shared with other Federal agencies for the purpose of protecting national security (49 U.S.C. 44909(c)(5)).

## PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

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

**Authority:** 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding the following in appropriate numerical sequence according to the section number under the columns indicated:

**§ 178.2 Listing of OMB control numbers.**

| 19 CFR section | Description | OMB control no. |
|---|---|---|
| * | * * * | * |
| § 122.49a | Passenger and crew manifests. | 1515–0232 |
| * | * * * | * |

Approved: December 21, 2001.

**Robert C. Bonner,**

*Commissioner of Customs.*

**Timothy E. Skud,**

*Acting Deputy Assistant Secretary of the Treasury.*

[FR Doc. 01–32034 Filed 12–28–01; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 352

**[Docket No. 78N–0038]**

**RIN 0910–AA01**

## Sunscreen Drug Products for Over-the-Counter Human Use; Final Monograph; Partial Stay; Final Rule

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

**ACTION:** Final rule; partial stay.

**SUMMARY:** The Food and Drug Administration (FDA) is staying the final monograph for over-the-counter (OTC) sunscreen drug products that published in the **Federal Register** of May 21, 1999 (64 FR 27666). The final monograph established conditions under which OTC sunscreen drug products are generally recognized as safe and effective and not misbranded. This stay of effective date applies to all OTC sunscreen drug products that would be regulated under part 352 (21 CFR part 352). This action does not stay the effective date for products that would be regulated under parts 310 and 700 (21 CFR parts 310 and 700). This action is being taken because the agency will be amending part 352 to address formulation, labeling, and testing requirements for both ultraviolet A (UVA) radiation protection and ultraviolet B (UVB) radiation protection. This action is part of FDA's ongoing review of OTC drug products.

**DATES:** This rule is effective January 30, 2002. Part 352, added at 64 FR 27666 at 27687, is stayed until further notice. Written or electronic comments by April 1, 2002.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

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

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of May 21, 1999, FDA published a final rule in the form of a final monograph for OTC sunscreen drug products in part 352. The monograph included 16 active ingredients, required labeling for products that contain one or more of these active ingredients, a standardized test for measuring sun protection factor (SPF) values, and standard methods for measuring the water resistant properties of sunscreens. The labeling and test methods covered products intended to provide UVB radiation protection. The monograph did not, however, address active ingredients, labeling, and test methods for products intended to provide UVA protection. The final rule also included related nonmonograph conditions in § 310.545(a)(29) (21 CFR 310.545(a)(29)) and new § 700.35 (21 CFR 700.35), which addressed labeling for cosmetic products that contain sunscreen active ingredients for nontherapeutic, nonphysiologic uses (e.g., as a color additive or to protect the color of the product). The agency set a 2-year effective date (May 21, 2001) for part 352 and for §§ 310.545(a)(29) and 700.35.

In the **Federal Register** of June 8, 2000 (65 FR 36319), the agency extended the effective date for all OTC sunscreen drug and cosmetic products that would be regulated under parts 310, 352, and 700 to December 31, 2002. The agency stated that this extension would be in the public interest as the agency developed a comprehensive sunscreen final monograph that addresses formulation, labeling, and testing requirements for both UVB and UVA radiation protection under part 352. The agency stated in this notice that it intended to move forward and publish a proposed rule for a comprehensive final monograph, receive comments on that proposal, and issue a final rule by December 31, 2001. That final rule would then have a 1-year effective date of December 31, 2002.

### II. Stay of Part 352

The June 8, 2000, extension of effective date also included a reopening of the administrative record to allow for comment on specific information the agency requested in that document. The comment period closed on September 6, 2000. Since that time, the agency has been developing a proposed amendment to part 352 that addresses both UVB and UVA radiation protection.

The agency expects to publish the proposal to amend part 352 next year. Following that publication, there will be a comment period and then the agency will prepare an amended final monograph for publication in a future issue of the **Federal Register**. Because the agency has not yet published the proposed amendment to part 352, it is not possible for manufacturers of OTC sunscreen drug products to relabel and

test their products in accord with an amended final monograph by the current effective date of December 31, 2002.

Accordingly, the agency is staying part 352 until further notice is provided in a future issue of the **Federal Register**. The agency will propose a new effective date for part 352 within the proposed amendment. The agency anticipates that this new effective date will not be before January 1, 2005.

This stay of effective date does not apply to parts 310 or 700, because the amendment of the monograph in part 352 has no effect on the requirements in these parts. The agency has already extended the effective dates for parts 310 and 700 to December 31, 2002, and finds there is no reason to further extend that date.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. (553(b)(3)(A). Alternatively, the agency's implementation of this action without opportunity for public comment comes within the good cause exceptions in 5 U.S.C. 553(b)(3)(B) and (d)(3) in that obtaining public comment is impracticable, unnecessary, and contrary to the public interest. The agency is staying part 352 because the agency has determined that it is not possible for manufacturers of OTC sunscreen drug products to relabel and test their products in accord with an amended final monograph by the current effective date of December 31, 2002. The agency intends to publish a proposal to amend part 352 next year in order to develop a comprehensive sunscreen monograph that addresses formulation, labeling, and testing requirements for both UVB and UVA radiation protection. This amendment will propose a new effective date for part 352. Thus, there will be an opportunity for public comment on the new effective date within the proposed amendment to part 352. In accordance with 21 CFR 10.40(e)(1), FDA is providing an opportunity for comment on whether this partial stay should be modified or revoked.

## III. Analysis of Impacts

The economic impact of the final monograph was discussed in the final rule (64 FR 27666 at 27683). The economic impact of the extension of the effective date of the monograph until December 31, 2002, was discussed in the final rule extending that date (65 FR 36319 at 36323). This stay of the effective date provides additional time for companies to relabel and retest products, eliminates a second relabeling of sunscreen drug products when UVA labeling is included in the monograph, and reduces label obsolescence, as there will be additional time to use up more existing labeling. Thus, staying the effective date will significantly reduce the economic impact on industry.

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency concludes that this final rule is consistent with the regulatory philosophy and principles set out in the Executive order and in these two statutes. The final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. FDA has determined that the final rule does not have a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation.

The purpose of this final rule is to stay the effective date of the final monograph for OTC sunscreen drug products in part 352. This will provide additional time for manufacturers to relabel and retest products and to use up existing product labeling. The agency encourages manufacturers who use up their existing product labeling before the amended final monograph is issued to prepare new labeling in accord with the existing final monograph in part 352 in the format set forth in § 201.66 (21 CFR 201.66). Accordingly, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

## IV. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## V. Environmental Impact

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

## VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

## VII. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this rule by April 1, 2002. Three copies of all written comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This final rule (partial stay) is issued under sections 201, 501, 502, 503, 505, 510, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, and 371) and under

authority delegated to the Commissioner of Food and Drugs.

Dated: December 21, 2001.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 01–32086 Filed 12–28–01; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD01–01–207]**

**RIN 2115–AA97**

## Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone around the Seabrook Nuclear Power Plant in Seabrook, New Hampshire. The security zone will close off public access to all land and waters within 250 yards of the waterside property boundary of Seabrook Nuclear Power Plant. This action is necessary to ensure public safety and prevent sabotage or terrorist acts. Entry into this security zone is prohibited unless authorized by the Captain of the Port, Portland, Maine.

**DATES:** This rule is effective from December 7, 2001 until June 15, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD01–01–207 and are available for inspection or copying at Marine Safety Office Portland, Maine, 103 Commercial Street, Portland, Maine between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (Junior Grade) W. W. Gough, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780–3251.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. The Seabrook Nuclear Power Plant is open to possible attack from waters adjacent to nearby Hampton Harbor. Due to the potential catastrophic effect an exposure of radiation from the nuclear processes at the plant would have on the surrounding area, this rulemaking is urgently required to prevent potential future terrorist strikes against the Seabrook Nuclear Power Plant. The delay inherent in the NPRM process is contrary to the public interest insofar as it may render people and facilities within and adjacent to the Seabrook Nuclear Power Plant property vulnerable to subversive activity, sabotage or terrorist attack.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures implemented in this rule are intended to prevent possible terrorist attacks against the Seabrook Nuclear Power Plant and are needed to protect the facility, persons at the facility, the public and the surrounding community from potential sabotage or other subversive activity, sabotage and terrorist attacks, either from the water or by access to the facility by utilizing public trust lands between the low water and high water tide lines. Immediate action is required to accomplish these objectives. Any delay in the effective date of this rule is impracticable and contrary to the public interest.

This zone should have minimal impact on the users of Hampton Harbor, New Hampshire and the surrounding waters as vessels are able to pass safely outside the zone. Public notifications will be made to the maritime community via local notice to mariners and signs posted to inform the public of the boundaries of the zone.

### Background and Purpose

In light of terrorist attacks on New York City and Washington D.C. on September 11, 2001 a security zone is being established to safeguard the Seabrook Nuclear Power Plant, persons at the facility, the public and surrounding communities from sabotage or other subversive acts, accidents, or other events of a similar nature. The Seabrook Nuclear Power Plant presents a possible target of terrorist attack due to the catastrophic impact a release of nuclear radiation would have on the surrounding area. This security zone prohibits entry into or movement within the specified areas.

This rulemaking establishes a security zone in all land and waters within 250 yards of the waterside property boundary of Seabrook Nuclear Power Plant in Seabrook, New Hampshire bounded by a line beginning at position 42°53′58″ N, 070°51′06″ W, then running along the Seabrook Nuclear Power Plant property boundaries, ending at position 42°53′46″ N, 070°51′06″ W. The area along the Plant property boundaries is an area delineated by a fence, and runs east around the easternmost point of the property boundaries of Seabrook Nuclear Power Plant, then turns west to the point of termination. This security zone also closes all land within the zone to prevent access along areas traditionally reserved for public use between the mean low water tide line and the mean high water tide line. This rulemaking is necessary to provide complete protection of the waterfront areas of the Seabrook Nuclear Power Plant.

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port. Each person or vessel in a security zone shall obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port.

### Regulatory Evaluation

This temporary final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The effect of this regulation will not be significant for several reasons: The protected area is not regularly navigated; there is ample room for vessels to navigate around the security zone; notifications will be made to the local maritime community; and signs

will be posted informing the public of the boundaries of the zone.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Hampton Harbor. For the reasons enumerated in the Regulatory Evaluation section above, this security zone will not have a significant economic impact on a substantial number of small entities.

**Assistance for Small Entities**

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call Lieutenant (Junior Grade) Wade W. Gough, Marine Safety Office Portland, Maine, at (207) 780–3251. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

The Coast Guard has analyzed this rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An Unfunded Mandate is a regulation that requires a state, local or tribal government or the private sector to incur costs without the Federal government having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

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

**Civil Justice Reform**

This rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

**Protection of Children**

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has 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.

**Environment**

The Coast Guard has considered the environmental impact of this regulation and concluded that, under Figure 2–1, paragraph 34 (g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administer of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01—207 to read as follows:

### § 165.T01—207 Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire.

(a) *Location.* The following area is a security zone: All land and waters within 250 yards of the waterside property boundary of Seabrook Nuclear Power Plant identified as follows: beginning at position 42°53′58″ N, 070°51′06″ W then running along the property boundaries of Seabrook Nuclear Power Plant to its position 42°53′46″ N, 070°51′06″ W.

(b) *Effective dates.* This section is effective from December 7, 2001 until June 15, 2002.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, Portland, Maine.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Portland, Maine or designated on-scene U. S. Coast Guard patrol personnel. On-

scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

(3) No person may enter the waters within the boundaries of the security zone unless previously authorized by the Captain of the Port, Portland, Maine or his authorized patrol representative.

Dated: December 7, 2001.

**M. P. O'Malley,**

*Commander, U.S. Coast Guard Captain of the Port, Portland, Maine.*

[FR Doc. 01–32119 Filed 12–28–01; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–301202; FRL–6817–1]**

**RIN 2070–AB78**

## Clethodim; Pesticide Tolerances for Emergency Exemptions

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for combined residues of clethodim and its metabolites and their sulphoxides and sulphones in or on tall fescue forage and tall fescue hay. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on tall fescue. This regulation establishes a maximum permissible level for residues of clethodim in these food commodities. The tolerances will expire and are revoked on June 30, 2004.

**DATES:** This regulation is effective December 31, 2001. Objections and requests for hearings, identified by docket control number OPP–301202, must be received by EPA on or before March 1, 2002.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301202 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6463]; and e-mail address: Madden.Barbara@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br><br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?*

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the**Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2.*In person.* The Agency has established an official record for this action under docket control number OPP–301202. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall # 2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for combined residues of the herbicide clethodim, [(*E*)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one] and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexene-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexene-3-one moieties and their sulphoxides and sulphones, expressed as clethodim, in or on tall fescue forage at 10 parts per million (ppm) and tall fescue hay at 20 ppm. These tolerances will expire and are revoked on June 30, 2004. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the

FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

## III. Emergency Exemption for Clethodim on Tall Fescue and FFDCA Tolerances

Missouri is the second leading State in beef cows and grass hay production. These cows are predominantly raised on tall fescue (*Festuca arundinacea*) forage and hay because of its adaptation to the environmental conditions in Missouri. Tall fescue is susceptible to an endopyte-fungus *Acremonium coenophialum* which produces peptide ergot alkaloids that are toxic to cattle. Over the last decade a great deal of information has been developed about the causal relationship of the fungal endophyte-fescue relationship and the true nature of the toxic interactions. This increased awareness was aided by the identification of the primary toxic compound of *A. coenophialum* called ergovaline which is found in the highest concentration in the seedhead and seed of tall fescue. Therefore control of these reproductive structures will help reduce the overall concentration of ergovaline.

The toxic effects of ergovaline include: reproductive problems, summer syndrome (weight loss), staggers, reduced milk production, and fescue foot (poor circulation leading to loss of hind feet). The reproductive problems include reduction in pregnancy rates from 86 to 91% in endophyte-free pastures down to 67 to 72% in endophyte-infected pastures (a 22% reduction). Decreased milk production has been demonstrated with beef cattle showing a 25% reduction in milk production and Polled Hereford cows showing a 40% reduction in milk production. This reduced milk production will directly reduce calf survival. Another related syndrome is a hyperthermia response. This is believed to be a peripheral vasoconstriction associated with the endophyte. This leads to a reduced temperature in the legs and tail, an increase temperature in the core body, increased respiration, open mouthed breathing, and reduced average daily weight gain.

Currently, there are no pesticides registered for control of tall fescue seedheads in pasture or hay fields. Tests of vaccines and use of anthelmintics (anti-parasitoids) have provided only short-term relief (days) to cattle from the problem. Non-chemical control methods include pasture renovation and reseeding to non-endophytic fescue, rotation to non-fescue pastures, dilution with legumes, supplementing the feed with grain to reduce the amount of toxin ingested, controlled grazing (heavy foraging reduces seedhead formation), ammoniate hay to neutralize the toxic effects of ergovaline, and mechanically removing the seedheads with mowing. Taken singly or together these cultural methods do not provide an effective, economic long-term relief from the problem. Pasture renovation or dilution with legumes does not stop the reintroduction of endophyte-fescue. Rotation to non-fescue pastures is difficult because other pasture grasses do not grow as well therefore, there are very few non-fescue pastures. Supplementing grazing with other grains is expensive due to the cost of the grain, and the equipment to feed it. Controlled heavy grazing to remove seedheads is difficult because of the heavy flush of vegetative growth coincides with seedhead formation in the spring. Ammoniating hay is not effective in a pasture situation. Mechanical mowing to remove seedheads requires mowing the fields two to four times during the season and is costly in terms of time and money. EPA has authorized under FIFRA section 18 the use of clethodim on tall fescue to suppress stem and seedhead formation in tall fescue pasture or hay to reduce toxin producing endophyte-fungus in Missouri. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of clethodim in or on tall fescue forage and tall fescue hay. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on June 30, 2004, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on tall fescue forage and tall fescue hay after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether clethodim meets EPA's registration requirements for use on tall fescue or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of clethodim by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Missouri to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for clethodim, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

## IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of clethodim and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for combined residues of clethodim in or on tall fescue forage at 10 ppm and tall fescue hay at 20 ppm.

No fescue residue data were submitted for this specific emergency exemption request. The proposed use rate of clethodim for tall fescue is approximately one-eighth of the rate registered for use on alfalfa and clover. Therefore, the use of alfalfa and clover was translated to tall fescue for this section 18 use. The established tolerances for meat and milk are adequate to cover this section 18 use. According to Table 1 of OPPTS 860.1000 and the recommended and established tolerances for clethodim, the maximum theoretical dietary burdens were determined for beef and dairy cattle. Based on previous feeding studies, the secondary residues in meat and milk will not exceed the established tolerances as a result of this section 18 use.

Residues of clethodim in or on tall fescue are not expected to increase dietary exposure. Since tall fescue is not consumed by humans, any exposure to residues of clethodim from this emergency exeption will result from the consumption of meat or milk. The use of clethodim on tall fescue is not expected to result in exceedances of the tolerances that already exist for meat and milk. Therefore, establishing the tall fescue tolerance will not increase the most recent estimated aggregate risks resulting from use of clethodim, as discussed in the September 17, 2001 **Federal Register** (66 FR 47971, FRL–6800–9) final rule establishing tolerances for combined residues of clethodim in or on green onion, leaf lettuce, the Brassica head and stem subgroup, flax seed, flax meal, mustard seed, canola seed and canola meal, because in that prior action, risk was estimated assuming all meat and milk products contained tolerance level residues. Refer to the September 17, 2001 **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon that risk assessment and the findings made in the **Federal Register** document in support of this action. Below is a brief summary of the aggregate risk assessment.

An endpoint for acute dietary exposure was not identified since no effects were observed in oral toxicity studies that could be attributable to a single dose. Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Clethodim is not registered for use on any sites that would result in residential exposure. Therefore, short-term and intermediate-term aggregate risks were not assessed. Clethodim has been classified as a group E carcinogen. Therefore, clethodim is not expected to pose a cancer risk to humans. Therefore, the only exposure scenario the Agency assessed is for chronic (non-cancer) exposures to clethodim.

Using the Dietary Exposure Evaluation Model (DEEM™), an analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to clethodim for each commodity. The following assumptions were made for the chronic exposure assessments: The 3–day average of consumption for each sub-population is combined with residues to determine average exposure as milligram/kilogram/day (mg/kg/day). The chronic analysis was performed using tolerance level residues for all crops and livestock commodities. The projected percent crop treated (PCT) data (2% for lettuce, broccoli and cauliflower, 15% for cabbage, 25% for onion, and 1% for brussels sprouts), weighted average PCT treated data for existing registrations, and 100% crop treated (CT) data for all other uses.

Using the exposure assumptions described above, EPA has concluded that exposure to clethodim from food will utilize less than 1% of the chronic population adjusted dose (cPAD) for the U.S. population, less than 1% of the cPAD for females (13-50 years) and less than 1% of the cPAD for children 1-6 years old. There are no residential uses for clethodim that result in chronic residential exposure to clethodim. In addition, there is potential for chronic dietary exposure to clethodim in drinking water. After calculating drinking water levels of comparision (DWLOCs) and comparing them to the estimated environmental concentration (EECs) for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 1:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO CLETHODIM

| Population Subgroup | cPAD (mg/kg) | % cPAD (Food) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Chronic DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. population (total) | 0.01 | 0.0030 | 6.1 | 0.08 | 250 |
| Children 1-6 years | 0.01 | 0.0061 | 6.1 | 0.08 | 40 |
| Females 13-50 years | 0.01 | 0.0023 | 6.1 | 0.08 | 230 |

Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to clethodim residues.

## V. Other Considerations

### *A. Analytical Enforcement Methodology*

As discuseed in the September 17, 2001 **Federal Register** document (66 FR 47971), an adequate enforcement methodology is available to enforce the tolerance expression. The methods may be requested from: Francis Griffith, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Road, Fort George G. Mead, Maryland, 20755–5350; telephone

number: (410) 305–2905; e-mail address: griffith.francis@epa.gov.

*B. International Residue Limits*

There are no established Codex maximum residue limits for residues of clethodim in or on tall fescue forage or hay. Therefore, there are no questions with respect to Codex/U.S. tolerance compatibility.

*C. Conditions*

One application may be made. A maximum of 0.031 pound active ingredient may be applied per acre. Clethodim is not to be applied within 15 days of grazing, feeding, or harvesting (cutting) forage or hay.

## VI. Conclusion

Therefore, the tolerance is established for combined residues of clethodim, [(*E*)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one] and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexene-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexene-3-one moieties and their sulphoxides and sulphones, expressed as clethodim, in or on tall fescue forage at 10 ppm and tall fescue hay at 20 ppm.

## VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

*A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301202 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 1, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–301202, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

*B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## VIII. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That*

*Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

## IX. Submission to Congress and the Comptroller General

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

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 19, 2001.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.458 is amended by adding paragraph (b) to read as follows:

### § 180.458 Clethodim; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the combined residues of clethodim, [(*E*)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one] and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexene-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexene-3-one moieties and their sulphoxides and sulphones, expressed as clethodim in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. These tolerances will expire and are revoked on the date specified in the following table:

| Commodity | Parts per million | Expiration/revocation date |
|---|---|---|
| Fescue, tall, forage | 10 | 6/30/04 |
| Fescue, tall, hay | 20 | 6/30/04 |

* * * * *

[FR Doc. 01–32105 Filed 12–28–01; 8:45 am]
BILLING CODE 6560–50–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### 42 CFR Parts 413, 419, and 489

**[CMS–1159–F3]**

**RIN 0938–AL35**

## Medicare Program; Prospective Payment System for Hospital Outpatient Services; Delay in Effective Date of Calendar Year 2002 Payment Rates and the Pro Rata Reduction on Transitional Pass-Through Payments

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

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

**SUMMARY:** This document delays the effective date of the payment rates announced for Medicare hospital outpatient services paid under the prospective payment system for calendar year 2002. These rates were announced in a November 30, 2001 final rule (66 FR 59856). In addition, this document delays the effective date of the uniform reduction to be applied to each of the transitional pass-through payments for CY 2002. Certain provisions of the November 30, 2001 rule, as discussed in the **SUPPLEMENTARY INFORMATION** section, are not delayed.

**DATES:** The effective date of the amendments to 42 CFR published at 66 FR 59856 (November 30, 2001) remains January 1, 2002, except that the effective date for § 419.32(b)(1)(iii) is delayed indefinitely. Also, the effective date for § 419.62(d), added at 66 FR 55865, published on November 2, 2001, is delayed indefinitely. The effective date of the payment rates announced for Medicare hospital outpatient services paid under the prospective payment system for calendar year 2002, published in the preamble and addenda of the November 30, 2001 final rule, and the uniform reduction to be applied to each of the transitional pass-through payments for CY 2002, published in the preamble and addenda of the November 30, 2001 final rule, is delayed until no later than April 1, 2002. These rates were announced in a November 30, 2001 final rule (66 FR 59856). We will publish a document in the **Federal Register** announcing the new effective date for the rates and for § 419.32(b)(1)(iii) and § 419.62(d).

**FOR FURTHER INFORMATION CONTACT:** James L. Hart, (410) 786–0378.

**SUPPLEMENTARY INFORMATION:**

### Availability of Copies and Electronic Access

*Copies:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Website address is: *http://www.access.gpo.gov/nara/index.html.*

### I. Background

On November 30, 2001, we published a final rule announcing the final ambulatory payment classification (APC) groups, relative weights, and payment rates under the hospital outpatient prospective payment system (OPPS) for calendar year 2002 (66 FR 59856). As discussed in detail in that document, in setting the APC relative weights, we incorporated 75 percent of the estimated costs for devices eligible for transitional pass-through payments in 2002 into the costs of the APC groups associated with the use of the devices (66 FR 59906).

After the publication of the November 30 final rule, we discovered that the final rule reflects several inadvertent technical errors in which we incorrectly associated specific devices approved for transitional pass-through payments with particular procedures. The effects of the errors we have identified are of a magnitude significant enough to affect not only the estimate of total transitional pass-through payments and the uniform reduction percentage to be applied to transitional pass-through payments in 2002, but also the payment rates for all APCs. Using rates that reflect these errors would result in inappropriate, uneven effects on payments to hospitals. Thus, we believe it would be inappropriate to proceed to make the payment rates published on November 30 effective without further changes.

In order to thoroughly assess the accuracy of the data files containing these errors and to assure that they do not contain further errors that might also have significant implications, an intensive review of the data will be necessary. Because of the time needed for this review, we cannot complete this review and recalculate the rates before the previously published effective date of January 1, 2002. We will, therefore, continue to pay for services covered under the OPPS after January 1 and until no later than April 1, 2002 under the rates in effect on December 31, 2001. We will also continue until no later than April 1, 2002 to make transitional pass-through payments for drugs and devices without applying the uniform reduction announced on November 30, 2001.

Once our review has been completed and the rates corrected, we will publish a final rule with revised rates and a revised calculation of the uniform reduction in transitional pass-through payments. We will announce the effective date of these changes in that rule.

### II. List of OPPS Provisions That Are Not Delayed

This document does not delay the following provisions:

- Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 coinsurance limit.
- Limitation of coinsurance amount to inpatient hospital deductible amount.
- Changes in services covered within the scope of OPPS.
- Categories of hospitals subject to, and excluded from, the OPPS.
- Criteria for new technology APCs.
- Provider-based issues.
- Change to the definition of ''single-use devices'' for transitional pass-through payments.

### III. Waiver of Notice of Proposed Rulemaking and the 30-Day Delay in the Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment

procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

We normally provide a delay of 30 days in the effective date of a final rule. However, if adherence to this procedure would be impracticable, unnecessary, or contrary to the public interest, we may waive the delay in the effective date. We find that a 30-day delay in the effective date of this regulation would be both impracticable and contrary to the public interest. In addition, although this is an ongoing final rule proceeding, we nevertheless have good cause to waive notice and comment. As we have discussed above, the rates that are scheduled to go into effect on January 1, 2002 reflect inadvertent technical errors that have major consequences. We, therefore, do not believe it is appropriate to implement the new rates on January 1, 2002. To proceed with making payments on the basis of significantly incorrect rates would be imprudent and contrary to the public interest. These errors were discovered within 30 days of the January 1, 2002 effective date. Therefore, there is an urgent need to proceed with a delay in the effective date of the 2002 rates, and there is not sufficient time to provide notice of proposed rulemaking and a 30-day notice of the delay.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 18, 2001.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: December 21, 2001.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 01–32091 Filed 12–27–01; 8:55 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 223 and 224

**[Docket No.010607150–1264–02; I.D.091200F]**

**RIN 0648–AN64**

## Sea Turtle Conservation; Restrictions Applicable to Fishing and Scientific Research Activities

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is amending the sea turtle handling and resuscitation regulation. Recent scientific and technical information indicates that the current procedures need to be updated. This measure is necessary to improve the handling of sea turtles that are incidentally captured during scientific research or fishing activities.

**DATES:** This rule is effective December 31, 2001.

**ADDRESSES:**

**FOR FURTHER INFORMATION CONTACT:** Therese A. Conant (301) 713–1401.

**SUPPLEMENTARY INFORMATION:** The taking of sea turtles is governed by regulations implementing the Endangered Species Act (ESA) at 50 CFR parts 222 and 223 (see 64 FR 14051, March 23, 1999, final rule consolidating and reorganizing ESA regulations). Generally, the taking of sea turtles is prohibited. However, the incidental take of turtles during shrimp and summer flounder fishing in areas of the Atlantic Ocean and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 223.206, which include a requirement to have a NMFS-approved turtle excluder device (TED) installed in each net rigged for fishing. Other exceptions to the taking prohibition include incidental take that is authorized for ESA scientific research permits, incidental take permits, and section 7 incidental take statements. All take excepted from the prohibitions requires safe handling and resuscitation of incidentally caught sea turtles as specified at 50 CFR 223.206 (d)(1).

Sea turtles are air breathers and may drown under conditions of forced submergence. To minimize the impact of forced submergence, NMFS developed protocols to handle comatose turtles (FR 43 32801, July 28, 1978) and subsequently updated the protocols (57 FR 57354, December 4, 1992). New scientific and technical information has been collected since the last update. For example, the practice of stepping on the plastron to revive the turtle may actually do more harm than good. Plastral pumping may cause the airway to block, thus prohibiting air from entering the lungs. Pumping the plastron while a turtle is on its back also causes the viscera to compress the lungs which are located dorsally, thereby hindering lung ventilation. Recent physiological studies on the effects of trawl capture on small sea turtles show that high stress levels are developed during short-duration forced submergences and that the turtles may require from 3.5 up to 24 hours to recover from the stress effects. Resuscitation techniques have been refined over the years as biologists have developed effective ways to test for reflexes in order to determine the status of the turtle.

NMFS published a proposed rule (66 FR 32787, June 18, 2001) requesting comment on the following proposed changes: Eliminate stepping on the plastron as a method for resuscitation; provide a more defined criteria to determine dead versus comatose turtles; increase the minimum elevation of the hindquarters; add carapace movement and a reflex test to the resuscitation methods; and add several minor changes to clarify the guidance for keeping a turtle moist. No comments were received. The proposed changes are adopted as final.

### Classification

The AA has determined that this final rule is consistent with the ESA and with other applicable law.

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

The AA prepared an environmental impact statement (EIS) for the 1978 listing determination, establishing the handling and resuscitation requirements and prepared an environmental assessment (EA) for the 1992 updated of the requirements. The proposed rule was determined to be a Categorical Exclusion under the National Environmental Policy Act since the changes did not constitute a new action and individually or cumulatively have a significant impact on the quality of the human environment.

A memorandum was prepared for the Chief Counsel for Regulation of the Department of Commerce who certified to the Chief Counsel for Advocacy of the Small Business Administration stating that the proposed rule would not have significant economic impact on a substantial number of small entities. None of the changes will result in additional economic effects, since NMFS already requires fishermen and scientific researchers to safely handle and attempt resuscitation on sea turtles as necessary. The changes are limited to protocols for monitoring the turtle and make minor changes to the treatment that would require no additional material beyond what is already generally available onboard a vessel (e.g. elevating the sea turtles' hindquarters can be done with a tackle box or bumper). No comments were received regarding this certification. Thus, the

factual basis for the certification has not changed. As such, a final regulatory flexibility analysis is not required, and none has been prepared.

This final rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

**List of Subjects**

*50 CFR Part 223*

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

*50 CFR Part 224*

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

Dated: December 20, 2001.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 223 and 224 are amended as follows:

## PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

**Authority:** 16 U.S.C. 1531-1543; subpart B; 16 U.S.C. 1361 *et seq.et seq*.

2. In § 223.206, paragraph (d)(1) is revised to read as follows:

### § 223.206 Exceptions to prohibitions relating to sea turtles

* * * * *

(d) * * *

(1) *Handling and resuscitation requirements*. (i) Any specimen taken incidentally during the course of fishing or scientific research activities must be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water according to the following procedures:

(A) Sea turtles that are actively moving or determined to be dead as described in paragraph (d)(1)(i)(C) of this section must be released over the stern of the boat. In addition, they must be released only when fishing or scientific collection gear is not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels.

(B) Resuscitation must be attempted on sea turtles that are comatose, or inactive, as determined in paragraph (d)(1) of this section, by:

(*1*) Placing the turtle on its bottom shell (plastron) so that the turtle is right side up and elevating its hindquarters at least 6 inches (15.2 cm) for a period of 4 up to 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. Periodically, rock the turtle gently left to right and right to left by holding the outer edge of the shell (carapace) and lifting one side about 3 inches (7.6 cm) then alternate to the other side. Gently touch the eye and pinch the tail (reflex test) periodically to see if there is a response.

(*2*) Sea turtles being resuscitated must be shaded and kept damp or moist but under no circumstance be placed into a container holding water. A water-soaked towel placed over the head, carapace, and flippers is the most effective method in keeping a turtle moist.

(*3*) Sea turtles that revive and become active must be released over the stern of the boat only when fishing or scientific collection gear is not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels. Sea turtles that fail to respond to the reflex test or fail to move within 4 hours (up to 24, if possible) must be returned to the water in the same manner as that for actively moving turtles.

(C) A turtle is determined to be dead if the muscles are stiff (rigor mortis) and/or the flesh has begun to rot; otherwise the turtle is determined to be comatose or inactive and resuscitation attempts are necessary.

(ii) Notwithstanding the provisions of paragraph (d)(1)(i) of this section, a person aboard a pelagic longline vessel in the Atlantic issued an Atlantic permit for highly pelagic species under 50 CFR 635.4, must follow the handling and resuscitation requirements in 50 CFR 635.21.

(iii) Any specimen taken incidentally during the course of fishing or scientific research activities must not be consumed, sold, landed, offloaded, transshipped, or kept below deck.

* * * * *

## PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

3. The authority citation for part 224 continues to read as follows:

**Authority:** 16 U.S.C.1531–1543 and 16 U.S.C.1361 *et seq*.

4. Section 224.104 is revised by adding a new paragraph (d) to read as follows:

### § 224.104 Special requirements for fishing activities to protect endangered sea turtles.

* * * * *

(d) Special handling and resuscitation requirements are specified at § 223.206 (d)(1).

[FR Doc. 01–31976 Filed 12–28–01; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 66, No. 250
Monday, December 31, 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.

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA 071–0298; FRL–7123–8]**

## Revision to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing a full approval of a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California SIP concerning PM–10 emissions from industrial processes. We are proposing action on a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by January 30, 2002.

**ADDRESSES:** Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1135.

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA.

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### I. The State's Submittal

*A. What Rule Did the State Submit?*

Table 1 lists the rule proposed for full approval with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

| Local agency | Rule # | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| SJVUAPCD | 4201 | Particulate Matter Concentration | 12/17/92 | 11/18/93 |

On December 27, 1993, we determined that the submittal of Rule 4201 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

*B. Are there other versions of this rule?*

We approved the following versions of submitted SJVUAPCD Rule 4201 into the portions of the California SIP applicable to each of the eight counties that were unified and now comprise the SJVUAPCD:

- Fresno County Rule 404, Particulate Matter Concentration, approved on August 22, 1977 (42 FR 42219).
- Kern County Rule 404, Particulate Matter Concentration—Valley Basin, approved on August 22, 1977 (42 FR 42219).
- Kings County Rule 404, Particulate Matter, approved on August 4, 1978 (43 FR 34468).
- Madera County Rule 403, Particulate Matter Emissions from the Incineration of Combustible Refuse, approved on April 16, 1991 (56 FR 15286).
- Merced County Rule 404, Particulate Matter Concentration, June 14, 1978 (43 FR 25689).
- San Joaquin County Rule 404, Particulate Matter Concentration, approved on August 22, 1977 (42 FR 42219).
- Stanislaus County Rule 404, Particulate Matter Concentration, approved on August 22, 1977 (42 FR 42219).
- Tulare County Rule 404, Particulate Matter, approved on August 22, 1977 (42 FR 42219).

*C. What Are The Changes In The Submitted Rule?*

Submitted SJVUAPCD Rule 4201 changes are as follows:

- The rules of eight former indiviual county air districts that unified into SJVUAPCD are combined. The TSD has more information about this rule.

### II. EPA's Evaluation and Action

*A. How is EPA Evaluating the Rule?*

We evaluated the rule for consistency with the CAA as amended in 1990 and with 40 CFR part 51. The following guidance documents were used for reference:

- PM–10 Guideline Document, EPA–452/R093–008).
- Memorandum, Review of State Regulation Recodifications, OAQPS (February 12, 1990).

Sections 172(c)(1) and 189(a) of the CAA require moderate PM–10 nonattainment areas to implement reasonably available control measures (RACM), including reasonably available control technology (RACT) for existing stationary sources of PM–10. Section 189(b) requires that serious PM–10 nonattainment areas, in addition to meeting the RACM/RACT requirements, implement best available control measures (BACM), including best available control technology (BACT) for existing stationary sources of PM–10. SJVUAPCD is a serious PM–10 nonattainment areas and is required to implement BACM/BACT.

However, we have not reviewed the substance of the rules relative to BACM/BACT requirements at this time. The rules were approved into the SIP in previous rulemakings. We are now merely approving the combining of the individual rules into a single equivalent rule submitted by the State. Our administrative approval at this time does not imply any position with respect to the approvablility of the substance of the rules. To the extent that we have issued any SIP calls to the State with respect to the adequacy of any of the rules subject to this action, we will continue to require the State to correct any such rule deficiencies despite our present approval.

*B. Does the Rule Meet the Evaluation Criteria?*

The rule is largely consistent with relevant policy and guidance. The adoption of SJVUAPCD Rule 4201 improves the SIP by simplifying the eight SIP rules into one rule in the unified District.

*C. Previous Proposed Action and Public Comment*

We previously proposed a limited approval and limited disapproval for Rule 4201 on December 15, 2000 (65 FR 78434). The deficiencies were as follows:

- The rule does not meet the requirements of BACM/BACT. Other serious PM–10 nonattainment areas have lower particulate matter emission limits.
- The rule does not have periodic monitoring requirements.
- The rule does not require recordkeeping for at least two years.

EPA's proposed action provided a 30-day public comment period. During this period, we received a comment from the following party:

Mark Boese, SJVUAPCD; letter dated January 11, 2001 and received January 16, 2001.

The comment and our response are summarized below.

*Comment I:* SJVUAPCD notes the following points concerning the proposed limited approval and limited disapproval of Rule 4201, Particulate Matter Concentration, for not meeting the requirements of BACM/BACT and not having monitoring and recordkeeping requirements:

- It is a holdover from an earlier regulatory era that regulated Total Suspended Particulates (TSP) instead of PM–10.
- It is somewhat valuable for assuring that existing equipment maintains TSP emission controls.
- It is a generic rule not intended to fulfill BACM/BACT requirements for regulating PM–10. Specific, focused BACM/BACT determinations are or will be made elsewhere.
- Overall, Rule 4201 is of similar stringency to South Coast Air Quality Management District (SCAQMD) Rule 404.
- No PM–10 reductions have been attributed to the rule in the current PM–10 Plan submittal.
- Rule 4202, which covers sources similar to Rule 4201, does not have monitoring and recordkeeping requirements and was approved by EPA as meeting the requirements of RACM/RACT.
- SJVUAPCD encourages EPA to either approve Rule 4201 as a BACM/BACT rule or approve Rule 4201 as a RACM/RACT rule as was done for Rule 4202.

*Response:* We have evaluated these points and determined the following:

- Rules 4201 and 4202 are old TSP rules from a past regulatory era, when similar rules did not have monitoring and recordkeeping requirements. We recommend such requirements for a future revision of these rules.
- SJVUAPCD is a serious PM–10 nonattainment area and therefore must meet the requirements of BACM/BACT for source categories that are not insignificant or have major sources. We believe the source category for Rules 4201 and 4202 is not insignificant. Therefore, Rules 4201 and 4202 must meet the requirements of BACM/BACT. However, we will do an administrative approval of the eight individual county SIP rules without evaluating the substance of the rules at this time. Since our proposed action represents an administrative approval only, we may in the future require substantive changes to those SJVUAPCD rules, such as Rules 4201 and 4202, that regulate PM–10 emissions from existing stationary sources to address concerns related to BACM/BACT or to the attainment demonstration. Also, over the long-term, SJVUAPCD Rule 4201 may need to be revised to address deficiencies in enforceability prior to our approval of any redesignation to attainment.

*D. Present Proposed Action and Public Comment*

As authorized in section 110(k)(3) of the Act, EPA is proposing a full approval of SJVUAPCD Rule 4201 to improve the SIP. We will accept comments from the public on the proposed full approval for the next 30 days.

## III. Background Information

*Why Was This Rule Submitted?*

PM–10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions. Table 2 lists some of the national milestones leading to the submittal of local agency PM–10 rules.

TABLE 2.—PM–10 NONATTAINMENT MILESTONES

| Date | Event |
|---|---|
| March 3, 1978 | EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977. 43 FR 8964; 40 CFR 81.305. |
| July 1, 1987 | EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM–10). 52 FR 24672. |
| November 15, 1990 | Clean Air Act Amendments of 1990 were enacted, Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*. |
| November 15, 1990 | PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated nonattainment by operation of law and classified as moderate pursuant to section 188(a). States are required by section 110(a) to submit rules regulating PM–10 emissions in order to achieve the attainment dates specified in section 188(c). |

## 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. For this reason, this proposed action is also not subject to Executive Order 32111, ''*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*'' (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 (Public Law 104–4).

This rule also does not have tribal implications because it will 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). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action 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, ''*Protection of Children from Environmental Health Risks and Safety Risks*'' (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. 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: November 23, 2001.

**Sally Seymour,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 01–32104 Filed 12–28–01; 8:45 am]

BILLING CODE 6560–50–P

# Notices

Federal Register

Vol. 66, No. 250

Monday, December 31, 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

### Forest Service

### Deschutes and Ochoco National Forests Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Deschutes and Ochoco National Forests Resource Advisory Committee will meet on Tuesday, January 15, 2002, at the Central Oregon Intergovernmental Council building, main conference room, 2363 SW Glacier Place, Redmond, Oregon. The meeting will begin at 9 a.m. and continue until 3 p.m. Committee members will review projects proposed under Resource Advisory Committee consideration under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000. All Deschutes and Ochoco National Forests Resource Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Leslie Weldon, Designated Federal Official, USDA, Deschutes National Forest, 1634 Highway 20 East, Bend, Oregon 97702, 541–383–5512.

Dated: December 21, 2001.

**Leslie A.C. Weldon,**

*Forest Supervisor, Deschutes National Forest.*

[FR Doc. 01–32053 Filed 12–28–01; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Resource Advisory Committee Meeting

**AGENCY:** Southwest Idaho Resource Advisory Committee, Boise, ID; USDA, Forest Service Agriculture.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will meet Wednesday, January 16, 2001 in Boise, Idaho for a business meeting. The meeting is open to the public.

**SUPPLEMENTARY INFORMATION:** The business meeting on January 16, begins at 10:30 AM, at the Bureau of Reclamation Office, 1150 North Curtis Road, Boise, Idaho. Agenda topics will include development of committee operating guidelines, and process for soliciting project proposals, reviewing project proposals and recommending project proposals for approval.

**FOR FURTHER INFORMATION CONTACT:** Randy Swick, McCall District Ranger and Designated Federal Officer, at (208) 634–0400.

Dated: December 19, 2001.

**David F. Alexander,**

*Forest Supervisor.*

[FR Doc. 01–32055 Filed 12–28–01; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–870]**

### Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** December 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Amy Ryan, Alex Villanueva, and Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0961, (202) 482–6412, and (202) 482–3434, respectively.

#### 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. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

#### Preliminary Determination

We preliminarily determine that certain circular welded carbon-quality steel pipe (''pipe'') from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

*Case History*

This investigation was initiated on June 13, 2001. *See Notice of Initiation of Antidumping Duty Investigation: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China,* 66 FR 33227 (June 21, 2001) (''*Notice of Initiation*''). The Department set aside a period for all interested parties to raise issues regarding product coverage. *See Notice of Initiation* at 33228. We did not receive comments regarding product coverage.

On July 13, 2001, the United States International Trade Commission (''ITC'') issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from the PRC, which was published in the **Federal Register** on July 13, 2001. *See Circular Welded Non-Alloy Steel Pipe from China, Indonesia, Malaysia, Romania, and South Africa,* 66 FR 36801 (July 13, 2001).

On June 22, 2001, the Department issued a questionnaire to numerous known producers/exporters of the subject merchandise requesting volume and value of U.S. sales information. On July 3, 2001, Tai Feng Qiao Metal Products Co., (''Tai Feng Qiao''); WeiFang East Steel Pipe Co., Ltd. (''WeiFang''); PanGang Group BeiHai Steel Pipe Corp.; Northern Steel Pipe Co., Ltd.,; ZheJiang JingZhou HuaLong Petroleum Corrosion-Resistant Steel Pipe Co., Ltd.; Tianjin Shuang Jie Steel Pipe Co., Ltd. (''Tianjin Shuang Jie''); Walsall Steel Pipe Co., Ltd/China MinMetals ZhuHai Co., Ltd; XuZhou

GuangHuan Steel Tube Co., Ltd.; and Guangzhou Pearl River Steel Pipe Factory submitted responses to the Department's questionnaire seeking volume and value of U.S. sales information. On July 9, 2001, Baosteel Group International Trade Corporation (''Baosteel International'') and Tianjin Shuang Jie, submitted responses to the Department's questionnaire seeking volume and value of U.S. sales information.

On July 17, 2001, the Department issued its respondent selection memorandum, selecting Baosteel International, Tianjin Shuang Jie, and WeiFang to be investigated (*see Selection of Respondents* section below). On July 19, 2001, Tai Feng Qiao requested the Department to reconsider its respondent selection and include Tai Feng Qiao as a mandatory respondent. On July 23, 2001, China MinMetals ZhuHai Co. (''ZhuHai'') submitted its response to the Department's questionnaire seeking volume and value of U.S. sales information.

On July 25, 2001, the Department issued a letter to interested parties providing an opportunity to comment on the Department's proposed product characteristics criteria. On August 1, 2001, we received comments from Tianjin Shuang Jie on the Department's proposed product characteristics criteria.

On July 18, 2001, the Department issued its Section A antidumping duty questionnaire to Baosteel International, Tianjin Shuang Jie, and WeiFang. On August 7, 2001, the Department received extension requests from parties for responding to the Department's Section A antidumping duty questionnaire. Additionally, on August 7, 2001, the Department issued the remaining portion (i.e., Sections C & D) of its antidumping duty questionnaire to Baosteel International, Tianjin Shuang Jie, and WeiFang. On August 15, 2001, we received Section A responses from Baosteel International, Tianjin Shuang Jie, and WeiFang.

On August 1, 2001, ZhuHai and Walsall Steel Pipe Industrial Co., Ltd (''Walsall'') requested the Department to reconsider its respondent selection and include ZhuHai and Walsall as mandatory respondents. On August 6, 2001, Zhejiang Kingland Group, Inc. (''Jinzhou'') requested to be included in the investigation as a voluntary respondent. On August 8, 2001, Tai Feng Qiao requested the Department to reconsider its respondent selection and include Tai Feng Qiao as a mandatory respondent. On August 16, 2001, ZhuHai and Walsall requested to be allowed to participate in this investigation as mandatory respondents.

On August 8, 2001, the Department received a Section A response from Walsall. On August 15, 2001, the Department received Section A responses from Baosteel International, Tianjin Shuang Jie, WeiFang, Tai Feng Qiao, and ZhuHai. On August 22, 2001, the Department received Section A response from Pangang Group International Economic and Trade Corporation (''Pangang International''). On August 31, 2001, the Department received a Section A and volume and value response from Jinzhou.

On August 24, 2001, the Department issued its supplemental Section A questionnaire to Baosteel International. On September 5, 2001, the Department received Baosteel International's Section C and D response. On September 7, 2001, the Department received Baosteel International's supplemental Section A response. On September 28, 2001, the Department issued its supplemental Section C and D questionnaire to Baosteel International. On October 12, 2001, the Department received Baosteel International's supplemental Section C and D response. On October 12, 2001, the Department issued its second supplemental Section A questionnaire to Baosteel International. On October 19, 2001, the Department received Baosteel International's second supplemental Section A response. On October 29, 2001, the Department issued its second supplemental Section C and D questionnaire to Baosteel International. On November 5, 2001, the Department received Baosteel International's second supplemental Section C and D response. On November 14, 2001, the Department issued its third supplemental Section C and D questionnaire to Baosteel International. On November 20, 2001, the Department received Baosteel International's third supplemental Section C and D response. On November 28, 2001, the Department requested that Baosteel International provide answers to two additional questions. *See Memorandum to the File from Robert Bolling,* dated November 28, 2001. On November 29, 2001, the Department received Baosteel International's response to the two questions.

On August 21, 2001, the Department issued its supplemental Section A questionnaire to Tianjin Shuang Jie. On September 5, 2001, the Department received Tianjin Shuang Jie's Section C and D questionnaire response and Tianjin Shuang Jie's Section A supplemental questionnaire response. On September 28, 2001, the Department issued its Section A, C and D supplemental questionnaire. On October 12, 2001, the Department received Tianjin Shuang Jie's supplemental Section A, C and D response. On October 29, 2001, the Department issued its second Section C and D supplemental questionnaire. On November 5, 2001, the Department received Tianjin Shuang Jie's second Section C and D supplemental questionnaire response. On November 7, 2001, the Department issued its third Section C and D supplemental questionnaire to Tianjin Shuang Jie. On November 8, 2001, the Department received Tianjin Shuang Jie's third Section C and D supplemental questionnaire response. On November 29, 2001, the Department issued its fourth Section C and D questionnaire to Tianjin Shuang Jie. On December 1, 2001, the Department received Tianjin Shuang Jie's fourth Section C and D supplemental questionnaire response. On December 5, 2001, the Department received a submission from Tianjin Shuang Jie regarding the valuation of hot-rolled coil and others factors that it thought the Department should use in its preliminary determination. On December 17, 2001, Tianjin Shuang Jie, requested an extension of the Department's final determination.

On August 22, 2001, the Department issued its supplemental Section A questionnaire to WeiFang. On September 5, 2001, the Department received WeiFang's supplemental Section A response. On September 17, 2001, the Department issued its supplemental Sections A, C and D questionnaires to WeiFang. On October 12, 2001, the Department received WeiFang's supplemental Sections A, C and D responses. On November 8, 2001, the Department issued its second supplemental Section C and D questionnaires to WeiFang.

On October 26, 2001, the Department published a notice of postponement of its preliminary antidumping duty determination. *See Notice of Postponement of Preliminary Antidumping Duty Investigation of Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China,* 66 FR 54198, October 26, 2001.

On November 7, 2001, the Department issued supplemental Section A questionnaires to Zhuhai, Pangang International, Tai Feng Qiao, Walsall, and Jinzhou, exporters of the subject merchandise requesting a separate rate. On November 13, 2001, Pangang International requested a two-day extension for filing its supplemental Section A response. On November 14, 2001, the Department received supplemental Section A responses from

Zhuhai, Tai Feng Qiao, Walsall, and Jinzhou. Additionally, on November 16, 2001, the Department received a supplemental Section A response from Pangang International.

On December 10, 2001, petitioners submitted preliminary determination comments to the Department regarding the valuation of hot-rolled coil and other factors. On December 13, 2001, Tianjin Shuang Jie responded to petitioners comments, however Baosteel International and WeiFang did not respond.

*Period of Investigation*

The period of investigation (''POI'') is October 1, 2000 through March 31, 2001. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (May 24, 2001). *See* 19 CFR 351.204(b)(1).

*Scope of Investigation*

The products covered by this investigation are certain welded carbon-quality steel pipes and tubes, of circular cross-section, with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm), regardless of wall thickness, surface finish (black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (ASTM, proprietary, or other), generally known as standard pipe and structural pipe.

Standard pipes and tubes are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may carry liquids at elevated temperatures but may not be subject to the application of external heat. It may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells, and for structural applications in general construction. It primarily is made to American Society for Testing and Materials (ASTM) A–53, A–135, and A–795 specifications, but can also be made to the British Standard (BS)–1387 specification.

Structural pipe is intended for use in the construction of bridges and buildings, and general structural applications. It also can be used for making steel scaffolding and for piling applications. It primarily is made to ASTM A–500 and A–252 specifications.

Hence, specifically included within the scope of these petitions are products stenciled to the ASTM standards A–53, A–135, A–795, A–120, A–500, A–252, or their equivalents. Standard and structural pipe products may also be produced to proprietary specifications rather than to industry standard. This is often the case with fence tubing, for example.

The scope does not include boiler tubes, pressure tubing, mechanical tubing, finished conduit, oil country tubular goods (OCTG), and line pipe. However, with regard to these excluded products, if petitioners or other interested parties provide to the Department reasonable grounds to believe or suspect that the products are being used in a standard or structural application, the Department may instruct the U.S. Customs Service to require end-use certifications. In addition, line pipe meeting the American Petroleum Institute (API) line pipe is excluded from the scope of these investigations, and any resultant antidumping duty order, if covered by the scope of another antidumping duty order from the same country.

The standard pipe products that are the subject of these investigations are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.30.10 and 7306.30.50. This petition also covers dual-certified A–53/API or single certified pipe that enters the United States if its is used in, or intended for use in, standard pipe or structural pipe applications. Such certified pipe may include API–5L or API–5L X–42 pipe. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

*Selection of Respondents*

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available to the Department at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. After consideration of the complexities expected to arise in this proceeding and the resources available to the Department, we determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. Instead, we limited our examination to the exporters and producers accounting for the largest volume of the subject merchandise pursuant to section 777A(c)(2)(B) of the Act. The three PRC producers/exporters, Baosteel International, Tianjin Shuang Jie, WeiFang (collectively, ''respondents''), accounted for the majority of all exports of the subject merchandise from the PRC during the POI, and were therefore selected as mandatory respondents. *See Memorandum from James Doyle to Edward Yang: Selection of Respondents: Antidumping Duty Investigation of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China,* July 17, 2001. We note that ZhuHai, Walsall, and Tai Feng Qiao requested that the Department consider each as mandatory respondents (see background section above). However, the respondents' submissions provided no new evidence that would convince the Department to reconsider its selection of respondents. Thus, we have continued to determine that due to the complexities of this investigation, the producers/exporters that the Department chose to investigate as mandatory respondents are appropriate.

*Nonmarket Economy Country Status*

The Department has treated the PRC as a non-market economy (''NME'') country in all past antidumping investigations *see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China,* 65 FR 33805 (May 25, 2000); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China,* 65 FR 19873 (April 13, 2000) (''*Apple Juice*''). A designation as an NME remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). No party to this investigation has requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue to treat the PRC as an NME country. When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base the normal value (''NV'') on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources

of individual factor prices are discussed under the ''Factor Valuations'' section, below.

Furthermore, no interested party has requested that the pipe industry in the PRC be treated as a market-oriented industry and no information has been provided that would lead to such a determination. Therefore, we have not treated the pipe industry in the PRC as a market-oriented industry in this investigation.

*Separate Rates*

In proceedings involving 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. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The three companies that the Department selected to investigate (*i.e.*, Baosteel International, Tianjin Shuang Jie, WeiFang), and the PRC companies that were not selected as mandatory respondents by the Department for this investigation, but which have submitted separate rates responses (*i.e.,* Zhuhai, Tai Feng Qiao, Walsall, Pangang International, and Jinzhou) have provided company-specific separate rates information and have each stated that they met the standards for the assignment of separate rates.

We considered whether each PRC company is eligible for a separate rate. The Department's separate rate test to determine whether the exporters are independent from government control does not consider, in general, 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 controls over the investment, pricing, and output decision-making process 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).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise 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) (''*Sparklers*''), as amplified by, *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*''). In accordance with 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

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See* Sparklers.

All eight PRC companies seeking separate rates reported that the subject merchandise was not subject to any government list regarding export provisions or export licensing, and was not subject to export quotas during the POI. Each company also submitted a copy of its Certificate of Approval for the Establishment of Enterprises with Foreign Investment. We found no inconsistencies with the exporters' claims of the absence of restrictive stipulations associated with an individual exporter's business and export licenses. Each exporter also submitted copies of the legislation of the People's Republic of China or documentation demonstrating the statutory authority for establishing the *de jure* absence of government control over the companies. Thus, we believe that the evidence on the record supports a preliminary finding of *de jure* absence of governmental control based on: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; and (2) the applicable legislative enactments decentralizing control of the companies.

1. Absence of De Facto Control

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 are subject to the approval of a governmental agency; (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 management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See, Silicon Carbide,* 59 FR at 22586–87; *see, also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995). 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,* 56 FR at 22587. 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.

Regarding whether each exporter sets its own export prices independent of the government and without the approval of a government authority, each exporter reported that it determines its prices for sales of the subject merchandise. *See,* Memorandum from Robert Bolling to Edward Yang, *Separate Rates Analysis for the Preliminary Determination,* dated December 20, 2001 (''*Separate Rates Memo*''). Each exporter stated that it negotiates prices directly with its customers. Also, each exporter claimed that its prices are not subject to review or guidance from any governmental organization. Regarding whether each exporter has authority to negotiate and sign contracts and other agreements, our examination of the record indicates that each exporter reported that it has authority to negotiate and sign contracts and other agreements. Also, each exporter claimed that its negotiations are not subject to review or guidance from any governmental organization. There is no evidence on the record to suggest that there is any governmental involvement in the negotiation of contracts.

Regarding whether each exporter has autonomy in making decisions regarding the selection of management, our examination of the record indicates that each exporter reported that it has autonomy in making decisions regarding the selection of management. Also, each exporter claimed that its selection of management is not subject

to review or guidance from any governmental organization. There is no evidence on the record to suggest that there is any governmental involvement in the selection of management by the exporters.

Regarding whether each exporter retains the proceeds from its sales and makes independent decisions regarding its disposition of profits or financing of losses, our examination of the record indicates that each exporter reported that it retains the proceeds of its export sales, using profits according to its business needs. Also, each exporter reported that the allocation of profits is determined by its top management. There is no evidence on the record to suggest that there is any governmental involvement in the decisions regarding disposition of profits or financing of losses.

Therefore, we determine that the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing that: (1) Each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) Each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) Each exporter has the authority to negotiate and sign contracts and other agreements; and (4) Each exporter has autonomy from the government regarding the selection of management.

The evidence placed on the record of this investigation by Baosteel International, Tianjin Shuang Jie, WeiFang, Zhuhai, Tai Feng Qiao, Walsall, Pangang International, and Jinzhou demonstrates an absence of government control, both in law and in fact, with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, for the purposes of this preliminary determination, we are granting separate, company-specific rates to each of the eight responding exporters which shipped pipe to the United States during the POI. For a full discussion of this issue, see the memorandum from Robert Bolling to Edward Yang, *Separate Rates Analysis for the Preliminary Determination,* dated December 20, 2001 (''*Separate Rates Memo*'').

*PRC-Wide Rate*

As discussed above (*see* ''Separate Rates''), all PRC producers/exporters that do not qualify for a separate rate are treated as a single enterprise. As noted above in ''Case History,'' all producers/exporters were given the opportunity to respond to the Department's questionnaire regarding volume and value of U.S. sales. As explained above, we received timely responses from Baosteel International; Tianjin Shuang Jie; WeiFang; Tai Feng Qiao; WeiFang, PanGang Group BeiHai Steel Pipe Corp.; Northern Steel Pipe Co., Ltd.,; ZheJiang JingZhou HuaLong Petroleum Corrosion-Resistant Steel Pipe Co., Ltd.; Walsall; ZhuHai; XuZhou GuangHuan Steel Tube Co., Ltd.; and Guangzhou Pearl River Steel Pipe Factory. The Department did not receive responses from the following companies: Anshan Iron & Steel (Group) Co.; Benxi Iron & Steel Co.; Dalian Steel Mill Pipe Plant; Zhongshan Huari Steel Pipe Co. Ltd./Wah Chit Ent Co. Ltd.; Hengyang Steel Tube Group Co. Ltd.; Hubei Hanchuan County Steel Tube Factory; Hubei Province Xianning District Galvanized Steel Plant; Hunan Province Linli County Steel Pipe Plant; Jilin Tonghua Iron & Steel Group—Jilin Tonghua Xianxin Enterprise Gourp; Jinxi (ASP) Steel Pipe Co.,; Shanghai Just-Huahai Metal Products Co. Ltd.; Shanghai Laodong Steel Pipe Plant; Shoudu Iron & Steel Co.; Sichuan Chuanton Changcheng Special Steel Group; Sichuan Daduhe Iron & Steel Co., Ltd.; Sichuan Province Chongxian Hi-FQ ERW Plant; Sichuan Province Jiangyou City Hi-FQ Welding Pipe Plant; Sichuan Province Shenfang Welding Pipe Plant; Suyang City Iron & Steel Plant; Wuhan Changlong Steel Pipe Plant; and Yangqun Steel Pipe Plant. The Department notes that import data from the United States Customs Service shows that imports of pipe from the PRC during the POI are higher than the volume and value of U.S. sales reported by exporters that responded to our request for this information (*see Respondent Selection Memorandum from James Doyle to Edward Yang,* July 17, 2001). Therefore, the Department preliminarily determines that there were exports of the merchandise under investigation from the single PRC entity, and that the single entity failed to respond to the Department's request for information.

As set forth above, section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See also ''Statement of Administrative Action'' accompanying the URAA, H.R. Rep. No. 103–316, 870 (1994) (''SAA''). The Department finds that exporters (*i.e.,* the single PRC entity) who did not respond to our request for information have failed to cooperate to the best of their ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate. Consistent with Department practice in cases where a respondent is considered uncooperative, as adverse facts available, we have applied 124.50 percent, the highest rate calculated in the initiation stage of the investigation from information provided in the petition (as adjusted by the Department). *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Germany,* 63 FR 10847 (March 5, 1998).

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See SAA* at 870. 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 id.* The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.* 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.

In order to determine the probative value of the initiation margin for use as facts otherwise available for the purposes of this determination, we examined evidence supporting the initiation calculations. We have now

corroborated the information in the petition, with some small changes. *See Memorandum from Edward Yang to Joseph Spetrini: Preliminary Determination in the Antidumping Investigation of Circular Welded Carbon Quality Steel Pipe (''pipe'') from the People's Republic of China: Total Facts Available Corroboration Memorandum for All Others Rate,* dated December 20, 2001.

Consequently, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters in the PRC based on our presumption that those respondents who failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the Chinese government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China,* 65 FR 25706, 25707 (May 3, 2000) (''Synthetic Indigo''). The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from Baosteel International, Tianjin Shuang Jie, WeiFang, Zhuhai, Tai Feng Qiao, Walsall, Pangang International, and Jinzhou.

Because this is a preliminary margin, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final PRC-wide margin. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation,* 65 FR 1139(January 7, 2000).

*Margins for Cooperative Exporters Not Selected*

The exporters who responded to Section A of the Department's antidumping questionnaire but were not selected as respondents in this investigation (Zhuhai, Tai Feng Qiao, Walsall, Pangang International, and Jinzhou) have applied for separate rates, and provided information for the Department to consider for this purpose. Although the Department is unable, due to administrative constraints (see Respondent Selection Memo), to calculate for each of these named parties who are exporters a rate based on their own data, these companies cooperated in providing all the information that the Department requested of them. For Zhuhai, Tai Feng Qiao, Walsall, Pangang International, and Jinzhou, we have calculated a weighted-average margin based on the rates calculated for those exporters that were selected to respond in this investigation, excluding any rates that are zero, *de minimis* or based entirely on adverse facts available. Companies receiving this rate are identified by name in the ''Suspension of Liquidation'' section of this notice. *See Notice of Preliminary Determination of Sales at Less Than Fair Value; Honey from the People's Republic of China,* 64 FR 24101 (May 11, 2001).

*Surrogate Country*

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department, in valuing the factors of production, shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME country; and (2) are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the NV section below.

The Department has determined that India, Pakistan, Indonesia, Sri Lanka and the Philippines are countries comparable to the PRC in terms of economic development. *See Memorandum from Jeffrey May to James Doyle: Antidumping Duty Investigation on Antidumping Duty Investigation of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China,* dated September 19, 2001. Customarily, we select an appropriate surrogate country based on the availability and reliability of data from the countries. For PRC cases, the primary surrogate country has often been India if it is a significant producer of comparable merchandise. In this case, we have found that India is a significant producer of comparable merchandise. *See Surrogate Country Selection Memorandum to The File from Robert Bolling,* dated December 20, 2001, (''*Surrogate Country Memorandum*'').

We used India as the primary surrogate country and, accordingly, we have calculated NV using Indian prices to value the PRC producers' factors of production, when available and appropriate. *See Surrogate Country Memorandum.* We have obtained and relied upon publicly available information wherever possible. *See Factor Valuation Memorandum to The File from Case Analysts,* dated December 20, 2001 (''*Factor Valuation Memorandum*'').

In accordance with section 351.301(c)(3)(i) of the Department's regulations, for the final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days after the date of publication of this preliminary determination.

*Fair Value Comparisons*

To determine whether sales of pipe to the United States by Baosteel International, Tianjin Shuang Jie, and WeiFang were made at less than fair value, we compared export price (''EP'') to normal value (''NV''), as described in the ''Export Price and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

*Export Price*

In accordance with section 772(a) of the Act, EP 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).

We calculated EP for Baosteel International, Tianjin Shuang Jie, and WeiFang based on delivered 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 foreign inland freight from the plant to the port of exportation, and brokerage and handling.

*Normal Value*

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

Factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We calculated NV based on factors of production, reported by each respondent, for materials, energy, labor, by-products, and packing. Where applicable, we deducted from each respondent's normal value the cost of by-products sold during the POI. For a further discussion, see the Analysis Memo for each respondent. We valued the majority of input factors using

publicly available published information as discussed in the ''Surrogate Country'' and ''Factor Valuations'' sections of this notice.

*Factor Valuations*

The Department will normally use publicly available information to value factors of production. However, in accordance with 19 CFR 351.408(c)(1), the Department's regulations also provide that where a producer sources an input from a market economy and pays for it in market economy currency, the Department employs the actual price paid for the input to calculate the factors-based NV. *Id.; see also, Lasko Metal Products* v. *United States, 43 F. 3d 1442, 1445–1446 (Fed. Cir. 1994)* (''*Lasko*''). Respondents Baosteel International and WeiFang reported that some of their inputs were sourced from market economies and paid for in a market economy currency. *See Factor Valuation Memorandum,* dated December 20, 2001 for a listing of these inputs.

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by respondents for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added surrogate freight costs to Indian import surrogate values using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F. 3d 1401 (Fed. Cir. 1997). For a detailed description of all surrogate values used for respondents, see *Factor Valuation Memorandum*.

Except as noted below, we valued raw material inputs using the weighted-average unit import values derived from the *Monthly Trade Statistics of Foreign Trade of India—Volume II—Imports* (''*Indian Import Statistics*'') for the time period April 2000–February 2001. As appropriate, we adjusted rupee-denominated values for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics and excluded taxes. We valued Baosteel International's hot-rolled steel sheet and hot-rolled steel strip at market-economy prices, because the PRC producers, Company A and Company B, of the subject merchandise purchased their hot-rolled steel sheet and hot-rolled steel strip from a market-economy country (Country Y). Although one of the producers also purchases certain hot-rolled steel sheet from another market-economy country (*i.e.,* Country X), we have disregarded these prices because that country's hot-rolled steel exporters have benefitted from countervailable subsidies. Thus, for this preliminary determination, we have used the market-economy prices that Company A and Company B paid to suppliers in Country Y only to value the hot-rolled sheet. We recognize that the hot-rolled sheet from Country Y was purchased by Company A outside of the POI. However, these prices are the appropriate market-economy prices to use to value hot-rolled coil in this investigation because evidence on the record indicates that the majority of Company A's pipe production during the POI was based on the hot-rolled sheet obtained from Country Y. For further discussion, please see the *Memorandum from Robert Bolling to the File: Analysis for the Preliminary Determination of Certain Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Baosteel International,* dated December 20, 2001. WeiFang reported that it purchased a significant portion of its major input of hot-rolled steel coil from a market economy, and the remainder from a company within the PRC. In those instances where a significant portion of the factor is purchased from a market economy supplier and the remainder from a non-market economy supplier, the Department normally will value the factor using the price paid to the market economy supplier. Therefore, pursuant to section 351.408(c)(1) of our regulations, we used a simple average of the prices paid by WeiFang for the market-economy purchases of hot-rolled coil. *See Factor Valuation Memorandum* at page 2.

To value electricity, we used data reported as the average Indian domestic prices within the category ''Electricity for Industry,'' published in the International Energy Agency's publication, *Energy Prices and Taxes,* Second Quarter, 2000. Because the data from this source was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor Valuation Memorandum* at page 5.

To value water, we used data reported as the average water tariff rate as reported in the Asian Development Bank's *Second Water Utilities Data Book: Asian and Pacific Region* published in 1997. Because the data from this source was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor Valuation Memorandum* at page 5.

We used Indian transport information to value transport for raw materials. For domestic inland freight (truck), we used a price quote from an Indian trucking company (from Financial Express), adjusted for inflation through the POI. For domestic inland freight (rail), we used rail rates as quoted from Indian Railway Conference Association price lists, adjusted for inflation through the POI. *See Factor Valuation Memorandum* at page 3.

To value factory overhead, selling, general and administrative expenses (''SG&A''), and profit, we calculated simple-average rates based on financial information from five Indian pipe producers. *See Factor Valuation Memorandum* at page 6.

For labor, consistent with section 351.408(c)(3) of the Department's regulations, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2001 (*see http://ia.ita.doc.gov/wages*). The source of the wage rate data on the Import Administration's Web site can be found in the *Yearbook of Labour Statistics 2000,* International Labor Office (Geneva: 2000), Chapter 5B: Wages in Manufacturing.

*Verification*

As provided in section 782(i)(1) of the Act, we intend to verify all company information relied upon in making our final determination.

*Suspension of Liquidation*

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise, except for merchandise produced and exported by Baosteel International or WeiFang, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

CERTAIN CIRCULAR WELDED CARBON-QUALITY STEEL PIPE

| Producer/manufacturer/exporter | Weighted-average margin (percent) |
|---|---|
| Baosteel International | 0 |
| Tianjin Shuang Jie | 16.65 |
| WeiFang | 0 |
| Tai Feng Qiao | 16.65 |
| ZhuHai | 16.65 |
| Pangang International | 16.65 |
| Jinzhou | 16.65 |
| Walsall | 16.65 |
| PRC-Wide | 36.42 |

*International Trade Commission Notification*

In accordance with section 733(f) of the Act, we have notified the ITC of our determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

*Public Comment*

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. *See* 19 CFR 351.309(c)(1)(i); 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. 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, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c).

If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of the preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: December 20, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 01–32114 Filed 12–28–01; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–824]**

### Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Initiation and Preliminary Results of Changed Circumstances Review of the Antidumping Order, and Intent To Revoke Order in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of initiation and preliminary results of changed circumstances antidumping duty review, and intent to revoke order in part.

**SUMMARY:** In accordance with 19 CFR 351.216(b), Dana Glacier Daido America, LLC (''Dana'') filed a request for a changed circumstances review of the antidumping order on certain corrosion-resistant carbon steel flat products from Japan with respect to the carbon steel flat products described below. Domestic producers of the like product have affirmatively expressed no interest in continuation of the order with respect to these particular carbon steel flat products. In response to Dana's request, the Department of Commerce (''the Department'') is initiating a changed circumstances review with respect to this request and issuing a notice of intent to revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** December 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Catherine Bertrand, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3207.

### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (''the Act''), by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR Part 351 (2001).

**SUPPLEMENTARY INFORMATION:**

*Background*

On November 21, 2001, Dana requested that the Department revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Specifically, Dana requested that the Department revoke the order with respect to imports meeting the following specifications: carbon steel coil or strip, measuring a minimum of and including 1.10 mm to a maximum of and including 4.90 mm in overall thickness, a minimum of and including 76.00 mm to a maximum of and including 250.00 mm in overall width, with a low carbon steel back comprised of: carbon under 0.10%, manganese under 0.40%, phosphorous under 0.04%, sulfur under 0.05%, and silicon under 0.05%; clad with aluminum alloy comprised of: under 2.51% copper, under 15.10% tin, and remainder aluminum as listed on the mill specification sheet. Dana is an importer of the products in question.

*Scope of Review*

The products covered by the antidumping duty order include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths

which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this order are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges.

Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating.

Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness.

Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

Also excluded from this order are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate.

Also excluded from this order are carbon steel flat products measuring 1.84 millimeters in thickness and 43.6 millimeters or 16.1 millimeters in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also excluded from this order are carbon steel flat products measuring 0.97 millimeters in thickness and 20 millimeters in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials.

Also excluded from this order are doctor blades meeting the following specifications: carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900–990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron.

Also excluded from this order are products meeting the following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also, excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring 1.93 millimeters or 2.75 millimeters (0.076 inches or 0.108 inches) in thickness, 87.3 millimeters or 99 millimeters (3.437 inches or 3.900 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 0.3% antimony, 2.5% silicon, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, clad with aluminum, measuring 1.75 millimeters (0.069 inches) in thickness, 89 millimeters or 94 millimeters (3.500 inches or 3.700 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 2.5% silicon, 0.3% antimony, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring a minimum of and including 1.10 mm to a maximum of and including 4.90 mm in overall thickness, a minimum of and including 76.00 mm to a maximum of and including 250.00 mm in overall width, with a low carbon steel back comprised of: carbon under 0.10%, manganese under 0.40%, phosphorous under 0.04%, sulfur under 0.05%, and silicon under 0.05%; clad with aluminum alloy comprised of: under 2.51% copper, under 15.10% tin, and remainder aluminum as listed on the mill specification sheet.

*Initiation of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part*

Pursuant to sections 751(d)(1) and 782(h)(2) of the Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.,* a changed circumstances review) where the Department determines that ''producers accounting for substantially all of the production of that domestic like product have expressed a lack of interest in

issuance of an order.'' Section 782(h)(2) of the Act. *See, e.g., Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Initiation and Preliminary Results of Changed Circumstances Review,* 66 FR 57415, 57416 (November 15, 2001). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or if other changed circumstances sufficient to warrant revocation exist. In addition, in the event that the Department concludes that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

In accordance with sections 751(d)(1) and 782(h)(2) of the Act, and 19 CFR 351.216 and 351.222(g), based on affirmative statements by domestic producers of the like product, Bethlehem Steel Corporation; LTV Steel Company, Inc.; National Steel Corporation; and U.S. Steel Group LLC (''Domestic Producers''), no further interest exists in continuing the order with respect to certain corrosion-resistant carbon steel flat products meeting the following specifications: carbon steel coil or strip, measuring a minimum of and including 1.10mm to a maximum of and including 4.90mm in overall thickness, a minimum of and including 76.00mm to a maximum of and including 250.00mm in overall width, with a low carbon steel back comprised of: carbon under 0.10%, manganese under 0.40%, phosphorous under 0.04%, sulfur under 0.05%, and silicon under 0.05%; clad with aluminum alloy comprised of: under 2.51% copper, under 15.10% tin, and remainder aluminum as listed on the mill specification sheet. *See* Domestic Producers' November 29, 2001 letter to the Department. Therefore, we are initiating this changed circumstances administrative review.

Furthermore, because domestic producers have expressed a lack of interest, we determine that expedited action is warranted, and we preliminarily determine that continued application of the order with respect to certain corrosion-resistant carbon steel flat products falling within the description above is no longer of interest to domestic interested parties. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results. Therefore, we are hereby notifying the public of our intent to revoke in part the antidumping duty order with respect to imports of certain corrosion-resistant carbon steel flat products meeting the above-mentioned specifications from Japan.

If the final revocation in part occurs, we intend to instruct the U.S. Customs Service (''Customs'') to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of certain corrosion-resistant carbon steel flat products meeting the specifications indicated above, not subject to final results of administrative review as of the date of publication in the **Federal Register** of the final results of this changed circumstances review in accordance with 19 CFR 351.222. We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties on certain corrosion-resistant carbon steel flat products meeting the above specifications will continue unless and until we publish a final determination to revoke in part.

*Public Comment*

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Parties to the proceedings may request a hearing within 14 days of publication. Any hearing, if requested, will be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than five days after the deadline for submission of case briefs. All written comments shall be submitted in accordance with 19 CFR 351.303 and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

This notice is published in accordance with section 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: December 20, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 01–32113 Filed 12–28–01; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–868]**

### Notice of Postponement of Final Antidumping Duty Determination: Folding Metal Tables and Chairs From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** December 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Helen Kramer or John Drury at (202) 482–0405 and (202) 482–0195, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

### Background

This investigation was initiated on May 17, 2001. See Initiation of Antidumping Duty Investigation: Folding Metal Tables and Chairs from the People's Republic of China, 66 FR 28728 (May 24, 2001). The period of investigation (POI) is October 1, 2000 through March 31, 2001. On December 3, 2001, the Department published its preliminary determination. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China, 66 FR 60185.

### Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. On December 3, 2001, the petitioner, Meco Corporation, requested a 60-day postponement of the final determination to allow sufficient

time for the Department to conduct its verifications, issue verification reports, and establish a briefing and hearing schedule that would allow the petitioner a full opportunity to review and comment on the issues in this investigation. On December 5, 2001, respondent Feili Furniture Development Co., Ltd. and Feili (Fujian) Co., Ltd. (''Feili Group'') asked the Department to reject petitioner's request on the grounds that the preliminary determination was affirmative. On December 10, 2001, respondent Shin Crest Pte. Ltd. (''Shin Crest'') requested that the Department postpone the final determination and extend the period that the provisional measures may remain in effect from four months to not more than six months.

In accordance with section 735(a)(2)(A) and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative, (2) Shin Crest accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the postponement request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination in the **Federal Register**. We are also extending the provisional measures, from four months to six months, in accordance with 19 CFR 351.210(e)(2). Therefore, the final determination would now be due on April 17, 2002. Suspension of liquidation will be extended accordingly.

This notice is published in accordance with section 735(a)(2) of the Act.

Dated: December 20, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 01–32115 Filed 12–28–01; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–337–806]**

## Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: IQF Red Raspberries From Chile

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary determination of sales at less than fair value and postponement of final determination.

**SUMMARY:** We preliminarily determine that individually quick frozen (''IQF'') red raspberries from Chile are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended. The estimated dumping margins are shown in the ''Suspension of Liquidation'' section of this notice.

Interested parties are invited to comment on this preliminary determination (*see* the ''Public Comment'' section of this notice).

**EFFECTIVE DATE:** December 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Annika O'Hara, Cole Kyle, or Blanche Ziv, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3798, (202) 482–1503, or (202) 482–4207, 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'') regulations are to 19 CFR Part 351 (April 2001).

### Background

Since the initiation of this investigation (*see Initiation of Antidumping Duty Investigation: IQF Red Raspberries from Chile,* 66 FR 34407 (June 28, 2001) (''*Initiation Notice*'')), the following events have occurred:

On July 9 and 10, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes. Interested parties filed comments from July 18, 2001 through August 3, 2001.

On July 16, 2001, the United States International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that imports of IQF red raspberries from Chile are materially injuring the United States industry (66 FR 38740 (July 25, 2001)).

On July 19, 2001, we selected the three largest producers/exporters of IQF red raspberries from Chile as the mandatory respondents in this proceeding. *See* Memorandum to Susan Kuhbach from Annika O'Hara entitled ''Respondent Selection'' which is on file in the Central Records Unit (''CRU'') in room B–099 of the main Department building.

We issued antidumping questionnaires to Comercial Fruticola (''Comfrut''), Exportadora Frucol (''Frucol''), and Fruticola Olmue (''Olmue'') on August 3, 2001. We received responses to Section A of the questionnaire on August 31, 2001 and responses to Sections B, C, and D on September 25, 2001. We issued supplemental questionnaires between October 16 and November 30, 2001, to which we received responses in November and December 2001. We received comments from the petitioners on each of the respondents' questionnaire responses. Subsequently, we received comments from the respondents on the petitioners' comments concerning the respondents' questionnaire responses.

On October 12, 2001, the petitioners made a timely request to postpone the preliminary determination pursuant to 19 CFR 351.205(e). On October 18, 2001, we postponed the preliminary determination until no later than December 12, 2001. *See Notice of Postponement of Preliminary Antidumping Duty Determination: IQF Red Raspberries from Chile,* 66 FR 53775 (October 24, 2001).

On December 12, 2001, the Department further postponed the preliminary determination in this investigation pursuant to section 351.205(b)(2) of the regulations and section 733 (c)(1)(B)(i)(II) of the Act due to several novel costs issues involved in this investigation. *See Notice of Postponement of Preliminary Antidumping Duty Determination: IQF Red Raspberries from Chile,* 66 FR 65177 (December 18, 2001).

### Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2)(A) of the Act, on December 12, 2001, Comfrut, Frucol, and Olmue, requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative, (2) Comfrut, Frucol, and Olmue account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request and are

postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

**Scope of the Investigation**

The products covered by this investigation are imports of IQF whole or broken red raspberries from Chile, with or without the addition of sugar or syrup, regardless of variety, grade, size or horticulture method (*e.g.,* organic or not), the size of the container in which packed, or the method of packing. The scope of the investigation excludes fresh red raspberries and block frozen red raspberries (*i.e.,* puree, straight pack, juice stock, and juice concentrate).

The merchandise subject to this investigation is classifiable under 0811.20.2020 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

**Comments on the Scope**

On August 30, 2001, the respondents filed a letter with the Department seeking confirmation that frozen raspberries known as ''dirty crumbles'' are not covered by the scope of this investigation. On September 12, 2001, the petitioners submitted a letter opposing the respondents' interpretation of the scope. The parties' arguments are summarized in a September 26, 2001, memorandum to Susan Kuhbach from the Team, in which the Department determined that ''dirty crumbles'' are included in the scope of this investigation. This memorandum is on file in the CRU.

**Period of Investigation**

The period of investigation (''POI'') is April 1, 2000, through March 31, 2001.

**Fair Value Comparisons**

To determine whether sales of IQF red raspberries from Chile to the United States were made at less than fair value (''LTFV''), we compared the export price (''EP'') to the normal value, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs to NVs.

**Product Comparisons**

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in the comparison market during the POI that fit the description in the ''Scope of the Investigation'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales of identical merchandise in the comparison market made in the ordinary course of trade, where possible. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. To determine the appropriate product comparisons, we considered the following physical characteristics of the products in order of importance: grade; variety; form; cultivation method; and additives.

**Export Price**

For all respondents, we calculated EP, in accordance with section 772(a) of the Act, because the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States, or to an unaffiliated purchaser for exportation to the United States. We based EP on the packed ex-factory, C&F, FOB, or delivered price to the unaffiliated purchasers in the United States. We made deductions from the starting price for movement expenses, including inland freight, warehousing, marine insurance, brokerage and handling, and international freight, in accordance with section 772(c)(2)(A) of the Act, where appropriate. We increased EP, where appropriate, for duty drawback in accordance with section 772(c)(1)(B) of the Act.

**Normal Value**

*A. Home Market Viability*

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

Comfrut, Frucol, and Olmue reported that their home market sales of IQF red raspberries during the POI were less than five percent of their sales of IQF red raspberries in the United States. Therefore, none of the three respondents had a viable home market for purposes of calculating normal value. Comfrut and Frucol reported that the United Kingdom was their largest viable third country market, and Olmue reported that France was its largest viable third country market. Accordingly, Comfrut and Frucol reported their sales to the United Kingdom and Olmue reported its sales to France for purposes of calculating normal value.

*B. Cost of Production Analysis*

Based on our analysis of an allegation contained in the petition, we found at the initiation of this investigation that there were reasonable grounds to believe or suspect that the respondents' sales of the subject merchandise in their respective comparison markets were made at prices below their cost of production (''COP''). Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation (*see Initiation Notice,* 66 FR 34409).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication of the foreign like product, plus an amount for general and administrative expenses (''G&A''), interest expenses, and comparison market packing costs (*see* the ''Test of Comparison Market Sales Prices'' section below for treatment of comparison market selling expenses). We relied on the COP data submitted by the respondents, except where noted below:

*Comfrut:*

a. We revised Comfrut's interest expense to include the current portion of the net loss on monetary correction.

b. We revised Comfrut's affiliated processor's reported costs for two items. First, we revised the affiliate's interest expense to include the current portion of the net loss on monetary correction. Second, we weight-averaged the affiliated processor's revised COP. We then increased Comfrut's costs to include the higher of the transfer price or cost of the major input, processing services. *See* December 20, 2001, Calculation Memorandum for Comfrut, for further information.

*Frucol:*

a. We increased the per-unit conversion costs using the correct total quantity of raspberries processed. Also, we increased the total cost of manufacturing to include all of the affiliated processor's expenses shown on its tax return. We used the tax return as the basis of costs for the affiliated processor because it does not prepare any financial statements.

b. We revised the combined general and administrative (''G&A'') expenses to include land rent associated with the processing plant and general expenses.

We increased the cost of goods sold used in the denominator of the rate calculation to include the additional expenses shown on the affiliated processor's tax return.

c. We revised the combined interest expense to include the current portion of the net loss on monetary correction. We increased the cost of goods sold used in the denominator of the rate calculation to include the additional expenses shown on the affiliated processor's tax return.

*See* Memorandum from Aleta Habeeb to Neal Halper, Director Office of Accounting, dated December 19, 2001, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination.''

*Olmue:*

We revised Olmue's interest expense to include the current portion of the net loss on monetary correction. *See* December 20, 2001, Calculation Memorandum for Olmue for further information.

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the comparison market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable movement charges, billing adjustments, commissions, warranty expenses, and other direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, 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.

3. Results of the COP Test

Pursuant to section 773(b)(1), where less than 20 percent of a respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the COP, we determine that the below-cost sales represent ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that for each respondent, for certain specific products, more than 20 percent of the comparison market sales were at prices less than the COP and thus the below-cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1).

For Comfrut and Olmue's U.S. sales of subject merchandise for which there were no comparable comparison market sales in the ordinary course of trade (*e.g.,* sales that passed the cost test), we compared those sales to constructed value (''CV''), in accordance with section 773(a)(4) of the Act.

*C. Calculation of Constructed Value*

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for Comfrut and Olmue, when sales of comparison products could not be found, either because there were no sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on CV.

In accordance with section 773(e)(1) and (e)(2)(A) of the Act, we calculated CV based on the sum of the cost of materials and fabrication for the subject merchandise, plus amounts for selling expenses, G&A, including interest, profit and U.S. packing costs. We made the same adjustments to the CV costs as described in the ''Calculation of COP'' section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based selling expenses, G&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country.

*D. Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent) 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the ''chain of distribution''),[1] including selling functions,[2] class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (i.e., NV based on either home market or third country prices [3]), we consider the starting prices before any adjustments. *See Micron Technology, Inc.* v. *United States,* 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001) (affirming this methodology).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP sales at a different LOT in the comparison market, where available data show that the difference in LOT affects price comparability, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

Comfrut and Frucol have reported that they sell to distributors in both the comparison market and in the United States. Olmue has reported that it sells to trading companies and end users in the comparison market and to trading companies and distributors in the United States. Each respondent has reported a single channel of distribution and a single level of trade in each market, and has not requested a level of trade adjustment. We examined the information reported by the respondents regarding their marketing processes for

[1] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of each respondent to properly determine where in the chain of distribution the sale appears to occur.

[2] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services. Other selling functions unique to specific companies were considered, as appropriate.

[3] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

making the reported home market and U.S. sales, including the type and level of selling activities performed and customer categories. *See* December 19 and 20, 2001, Calculation Memorandum for Comfrut, Frucol, and Olmue for further information. As Comfrut, Frucol, and Olmue have reported, we found a single level of trade in the United States, and a single, identical level of trade in the comparison market. Thus, it was unnecessary to make any LOT adjustment for comparison of EP and third country prices.

*E. Calculation of Normal Value Based on Comparison Market Prices*

We calculated NV based on ex-factory or delivered prices to unaffiliated customers in the comparison market. We made adjustments to the starting price for interest revenue and billing adjustments, where appropriate. We made deductions for movement expenses, including inland freight, warehousing, brokerage and handling expenses, and international freight, under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses, commissions, warranties, and other direct selling expenses, where appropriate.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted comparison market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

*F. Calculation of Normal Value Based on Constructed Value*

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We made adjustments to CV for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. In addition, we added U.S. packing costs.

**Currency Conversion**

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as reported by the Dow Jones.[4]

**Verification**

As provided in section 782(i) of the Act, we will verify all information relied upon in making our preliminary determination.

**Suspension of Liquidation**

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise (except for entries of Comfrut or Frucol because these companies have *de minimis* and zero margins, respectively) that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

| Exporter/manufacturer | Weighted-average margin percentage |
|---|---|
| Comercial Fruticola ... | 0.31 (*de minimis*) |
| Exportadora Frucol .... | 0.00 |
| Fruticola Olmue ..... | 5.54 |
| All Others ..... | 5.54 |

Pursuant to section 735(c)(5)(A), we have excluded from the calculation of the all-others rate margins which are zero or *de minimis.*

**ITC Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

**Disclosure**

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

**Public Comment**

Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

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, U.S. Department of Commerce, Room 1870, within 30 days of the 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 the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: December 20, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 01–32112 Filed 12–28–01; 8:45 am]

BILLING CODE 3510–DS–P

[4] We normally make currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. In this case, where costs and expenses were reported in Chilean pesos, we made currency conversions based on the exchange rates in effect on the dates of the U.S. sales as reported by the Dow Jones because the Federal Reserve Bank does not track the Chilean peso-to-dollar exchange rate.

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–580–834]**

## Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Notice of Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of changed circumstances antidumping duty administrative review.

**SUMMARY:** On October 1, 2001, the Department of Commerce (''Department'') published a notice of initiation in the above-named case. As a result of this review, the Department preliminarily finds for the purposes of this proceeding that INI Steel Company is the successor-in-interest to Inchon Iron and Steel Co., Ltd.

**EFFECTIVE DATE:** December 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Werner or Laurel LaCivita, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2667 and (202) 482–4243, respectively.

## Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (2001).

**SUPPLEMENTARY INFORMATION:**

## Background

In an August 6, 2001, letter to the Department, INI Steel Company (''INI''), formerly Inchon Iron and Steel Co., Ltd. (''Inchon''), notified the Department that as of August 1, 2001, Inchon's corporate name had changed to INI Steel Company. INI requested that the Department conduct an expedited changed circumstances review to confirm that INI is the successor-in-interest to Inchon. Since the Department had insufficient information on the record concerning this corporate name change, the Department concluded that it would be inappropriate to conduct an expedited changed circumstances review and issue a preliminary results concurrent with the initiation of a changed circumstance review. Thus the Department published only a notice of initiation. (*See Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Notice of Initiation of Changed Circumstances Antidumping Duty Administrative Review,* 66 FR 49927 (October 1, 2001) (''*Notice of Initiation*''). On October 17, 2001, the Department sent a questionnaire to INI requesting more information. On November 7, 2001, the Department received INI's response to the questionnaire. INI provided documentation on the name change requested by the Department consisting of: The minutes of Inchon's July 27, 2001 shareholders' meeting where the name change was approved; the Inchon District Court's official certification of the name change registered on July 31, 2001; INI's Business Registration Certificate issued on August 1, 2001 by the Inchon Tax Office; organization charts before and after the corporate name change; a list of the Board of Directors before and after the corporate name change; and a customer list before and after the name change. INI provided documentation regarding its acquisition of Sammi Steel Co., Ltd. (''Sammi'') including: Notification of Stock Receipt; Notification of Capital Increase with 3rd Party Consideration; Notification of Intent to Participate in Sammi's Capital Increase; Inchon's Shareholders Equity Ratio and Number of Outstanding Stocks as of 2000; Official Notification of Sammi's Graduation from Court Receivership by Bankruptcy Court; Sammi's Board of Directors (At the End of First Half of 2001); Former Inchon Employees Currently Employed by Sammi.

## Scope of the Review

For purposes of this changed circumstances review, the products covered are certain stainless steel sheet and strip 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 sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[1] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTSUS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

The Department has determined that certain additional specialty stainless steel products are also excluded from the scope of this review. These excluded products are described below.

Flapper value steel is excluded from this review. Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper

[1] Due to changes to the HTSUS numbers in 2001, 7219.13.0030, 7219.13.0050, 1719.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this review. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [2]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this review. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this review. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[6]

**Preliminary Results**

In making successor-in-interest determinations, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 57 FR 20460, 20461 (May 13, 1992). While no single factor, or combination of factors, will necessarily be dispositive, the Department will generally consider the new company to be the successor to its predecessor company if the resulting operations are essentially the same as the predecessor company. *E.g, id.* and *Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review,* 59 FR 6944, 6945 (February 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as its predecessor, the Department will treat the new company as the successor-in-interest to the predecessor.

Based on the information submitted by INI during the course of this changed circumstances review, we preliminarily find that INI is the successor-in-interest to Inchon because we preliminarily find that the company's organizational structure, senior management, production facilities, supplier relationships, and customers have remained essentially unchanged after the name change with respect to the subject merchandise. Furthermore, INI

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

has provided sufficient internal and public documentation of the name change. If there are no changes in the final results of the changed circumstances review, INI shall retain the antidumping duty deposit rate assigned to Inchon by the Department in the most recent administrative review of the subject merchandise.

Based on the information submitted by INI in reference to its acquisition of Sammi, we preliminarily find that INI and Sammi have not merged and remain separate legal entities. INI stated that it owns 68.42 percent of Sammi's equity, there is only one overlapping member on INI's and Sammi's boards of directors (and is a non-standing director of Sammi), and very few former employees of Inchon are now employed by Sammi. INI also stated that there are no changes at INI in terms of production facilities, production capacity, production lines, facilities or personnel, nor has it acquired or any plans to acquire, production facilities as a result of its acquisition of Sammi's shares. Thus, the Department will continue to treat INI and Sammi as two separate legal entities.

**Public Comment**

Pursuant to 19 CFR 351.310, any interested party may request a hearing within 10 days of publication of this notice. Case briefs and/or written comments from interested parties may be submitted no later than 21 days after the date of publication of this notice. Rebuttal briefs and rebuttals comments, limited to the issues raised in those case briefs or comments, may be filed no later than 28 days after the publication of this notice. All written comments must be submitted and served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. Any hearing, if requested, will be held no later than 30 days after the date of publication of this notice, or the first working day thereafter. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish in the **Federal Register** a notice of final results of this changed circumstances antidumping duty administrative review, including the results of its analysis of any issues raised in any written comments.

During the course of this changed circumstances review, we will not change any cash deposit instructions on the merchandise subject to this changed circumstances review, unless a change is determined to be warranted pursuant to the final results of this review.

We are issuing and publishing this finding and notice in accordance with sections 751(b) and 777(i)(1) of the Act and 19 CFR 351.221(c)(3) and 19 CFR 351.216.

Dated: December 20, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 01–32116 Filed 12–28–01; 8:45 am]

BILLING CODE 3510–DS–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 January 30, 2002.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@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: December 26, 2001.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of Elementary and Secondary Education

*Type of Review:* Revision.

*Title:* Applications for Assistance (Sections 8002 and 8003) Impact Aid Program.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

*Reporting and Recordkeeping Hour Burden:*

Responses: 1,061,320.

Burden Hours: 531,211.

*Abstract:* A local educational agency must submit an application to the Department to receive Impact Aid payments under Sections 8002 or 8003 of the Elementary and Secondary Education Act (ESEA), and a State requesting certification under Section 8009 of the ESEA must submit data for the Secretary to determine whether the State has a qualified equalization plan and may take Impact Aid payments into consideration in allocating State aid.

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, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO.RIMG@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 Kathy Axt at (540) 776–7742 or via her internet address *Kathy.Axt@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. 01–32056 Filed 12–28–01; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Energy Efficiency and Renewable Energy

### Federal Energy Management Program; Federal Purchasing of Energy-Efficient Standby Power Devices

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of availability of a preliminary list of standby power products and testing guidelines.

**SUMMARY:** The Department of Energy (DOE or Department) is publishing a preliminary standby product list and testing guidelines on its website as part of the implementation of Executive Order 13221, which directs government agencies to purchase devices with minimal standby power—at or below one watt where available. Manufacturers will continue to submit self-certified data for the standby power levels of their products. The list of products which includes computer and office, video, audio, telecommunications, and other products, will regularly be updated with these new voluntary manufacturer submittals. The list, guidelines, and instructions on submitting product data can be found on the DOE website at: *http://www.eren.doe.gov/femp/procurement*

**ADDRESSES:** Copies of this notice may be read at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestial Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday and Friday, except Federal holidays. Additional information on standby power, federal purchasing, and Executive Order 13221 can be found on the DOE website at: *http://www.eren.doe.gov/femp/procurement*

**FOR FURTHER INFORMATION CONTACT:** Ms. Alison Thomas, Program Manager, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–90, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–2099, email *alison.thomas@ee.doe.gov*

**SUPPLEMENTARY INFORMATION:** On July 31, 2001, President Bush signed Executive Order 13221, directing government agencies to purchase devices with minimal standby power—at or below one watt where available. He further ordered the Department of Energy (DOE), in consultation with the General Services Administration (GSA), the Defense Logistics Agency (DLA) and others, to develop a list of products that comply with this requirement. DOE is required to revise the list annually but will be updating the list as new manufacturer data is received.

**Douglas L. Faulkner,**

*Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy.*

[FR Doc. 01–32093 Filed 12–28–01; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Sunshine Act Meeting

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 12/17/2001 66 FR 64969.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** December 19, 2001 10:00 a.m.

**CHANGE IN THE MEETING:** The following Docket Nos. and Company have been added to Item E–70 of the Commission Meeting of December 19, 2001.

*Item No.:* E–70.

*Docket No. and Company:* ER00–2998–001, ER00–2999–001, ER00–3000–001, and ER00–3001–001, Southern Company Services, Inc.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 01–32143 Filed 12–26–01; 4:24 pm]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6624–9]**

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/oeca/ofa.*

Weekly receipt of Environmental Impact Statements

Filed December 17, 2001

Through December 21, 2001 Pursuant to 40 CFR 1506.9.

Due to the Closing of the U.S. Federal Government on Monday December 24, 2001, any EISs filed on Friday December 21, 2001 will APPEAR in the **Federal Register** on Friday January 4, 2002, with the 45-Day Comment Period and 30-Day Wait Period Calculated from Friday December 21, 2001.

*EIS No. 010532, Draft EIS, AFS, IL,* Natural Area Trails Project, Construction, Reconstruction, Maintenance and Designation of Trails for Hikers and Equestrian Use, Approval of Site-Specific Mitigation and/or Monitoring Standards, Shawnee National Forest, Jackson, Pope, Johnson, Union, Hardin and Saline Counties, IL, Comment Period Ends: February 11, 2001, *Contact:* Richard Johnson (618) 658–2111.

*EIS No. 010533, Final EIS, AFS, MT,* Keystone-Quartz Ecosystem Management, Implementation, Beaverhead-Deerlodge National Forest, Wise River Ranger District, Beaverhead County, MT, *Wait Period Ends:* January 28, 2002, *Contact:* Peri Suenram (406) 683–3967.

*EIS No. 010534, Draft EIS, AFS, CA,* Los Padres National Forest Oil and Gas Leasing Management, Implementation, Kern, Los Angeles, Monterey, Santa Barbara and San Luis Obispo Counties, CA, *Comment Period Ends:* February 15, 2002, *Contact:* Al Hess (Ext. 311) (805) 646–4348.

*EIS No. 010535, Draft EIS, AFS, MT,* White Pine Creek Project, Timber Harvest, Prescribe Fire Burning, Watershed Restoration and Associated Activities, Implementation, Kootenai National Forest, Cabinet Ranger District, Sanders County, MT, *Comment Period Ends:* February 11, 2002, *Contact:* John Head (406) 827–3533.

*EIS No. 010536, Final EIS, AFS, MT,* Kelsey-Beaver Fire Recovery Project, Fuel Reduction and Salvage of Fire-Killed Trees within Roderick South, Kelsey Creek and Upper Beaver Areas, Implementation, Kootenai National Forest, Three Rivers Ranger District, Lincoln County, MT , *Wait Period Ends:* January 28, 2002, Contact: Mike Giesey (406) 295–4693.

*EIS No. 010537, Draft EIS, SFW, CA,* Multiple Habitat Conservation Program for Threatened and Endangered Species Due to the Urban Growth within the Planning Area, Adoption and Incidental Take Permits Issuance, San Diego County, CA, *Comment Period Ends:* April 28, 2002, *Contact:* Lee Ann Carranza (760) 431–9440.

Dated: December 21, 2001.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 01–32037 Filed 12–28–01; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6625–1]**

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated May 18, 2001 (66 FR 27647).

### Draft EISs

*ERP No. D–BIA–K03026–CA* Rating EC2, Teayawa Energy Center, Construction and Operation of a 600 megawatt (MW)(nominal output), Natural-Gas-Fired, Combined-Cycle Energy Center, On Indian Trust Land, Torres Martinez Desert Cahuilla Indians Tribe, Coachella Valley, Riverside County, CA.

*Summary:* EPA expressed environmental concerns and requested additional information regarding potential impacts to air quality, water resources, and other alternatives considered.

*ERP No. D–BLM–K81027–NV* Rating EC2, Nevada Test and Training Range Resource Management Plan, (formerly Known as the Nellis Air Force Range (NAFR)), Implementation, Clark, Nye and Lincoln Counties, NV.

*Summary:* EPA expressed environmental concerns regarding the protection of water quality and biological resources, especially those dependent on water quality, and asked that the Bureau of Land Management incorporate pollution prevention practices in the resource planning area.

*ERP No. D–COE–E36180–MS* Rating EC2, Yalobusha River Watershed, Demonstration Erosion Control Project, Construction of Six Floodwater-Retarding Structures, Yazoo Basin, Webster, Calhoun and Chickasaw Counties, MS.

*Summary:* EPA expressed environmental concerns about the long-terms effects of the preferred channelization and reservoir alternative and whether this was the best means to achieve project objectives.

*ERP No. D–FHW–E40791–SC* Rating EO2, James E. Clyburn Connector Project, Construction of a Two-Lane Rural Roadway Northeast of Orangeburg and Southwest of Sumter, Funding and US Army COE Section 404 Permit Issuance, Calhoun, Claredon and Sumter Counties, SC.

*Summary:* EPA expressed environmental objections to the project as proposed because of the potential impacts to waters of the U.S., noise, and habitat; and requested additional information regarding these potential impacts.

*ERP No. D–NPS–E65058–GA* Rating LO, Fort Frederica National Monument General Management Plan, Implementation, Saint Simons Island, Glynn County, GA.

*Summary:* EPA review did not identify any potential environmental impacts requiring substantive changes to the proposal.

*ERP No. D–NPS–G61041–AR* Rating LO, Little Rock Central High School National Historic Site General Management Plan, Future Management and Use, Implementation, Little Rock, AR.

*Summary:* EPA has no objection to the selection of the preferred alternative.

*ERP No. D–UAF–G11041–OK* Rating EC2, Altus Air Force Base (AFB), Proposed Airfield Repairs, Improvements, Adjustments to Aircrew Training, and Installation of an Instrument Landing System (ILS) and a Microwave Landing System (MLS), Jackson County, OK.

*Summary:* EPA has identified environmental concerns regarding the need to provide more balance in the impact analysis and mitigation measures.

*ERP No. DS–FHW–H40088–IA* Rating EC2, IA–100 Extension Around Cedar Rapids, Edgewood Road to US 30, Reevaluation of the Project Corridor and Changes in Environmental Requirements, Funding and US Army COE Section 404 Permit Issuance, Linn County, IA.

*Summary:* EPA expressed environmental concerns that the project as proposed will affect the Rock Island Preserve both as a park and as habitat for the Byssus Skipper, a state threatened species of butterfly. EPA requested additional information regarding the design of the preferred alternative so impacts to the Preserve, the butterfly, wetlands and floodplains may be minimized.

### Final EISs

*ERP No. F–COE–G39033–LA* West Bay Sediment Diversion Channel Construction Project, Funding, Plaquemines Parish, LA.

*Summary:* EPA has no further comments to offer on the Final EIS and has no objections to the selection of the lead agency's preferred alternative.

*ERP No. F–FHW–F40223–MN* I–494 Reconstruction Corridor Study, I–394 on the west to the Minnesota River, Funding and US Army COE Section 404 Permit Issuance, Hennepin County, MN.

*Summary:* EPA expressed environmental objections that the final EIS does not present an adequate wetland mitigation plan and that wetland impacts have increased substantially. Until an adequate wetland mitigation plan is developed, EPA would object to the issuance of a Clean Water Act (CWA) Section 404 Permit for the Preferred Alternative identified in the FEIS.

*ERP No. F–FHW–K40239–CA* Interstate 215 (I–215) Transportation Improvements, from the short segments of CA–60 and CA–91 in the Cities of Riverside andMoreno Valley, Funding, Riverside County, CA.

*Summary:* EPA expressed continuing environmental concerns that the project will provide only marginal relief to congestion while compounding the poor air quality in the region. EPA requested additional air quality information be included in the ROD.

*ERP No. F–NPS–K61151–CA* Lassen Volcanic National Park General Management Plan, Implementation, Lassen, Plumas, Shasta and Tehama Counties, CA.

*Summary:* No formal comment letter was sent to the preparing agency.

Dated: December 20, 2001.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 01–32038 Filed 12–28–01; 8:45 am]

**BILLING CODE 6560–50–U**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7123–6]**

## Good Neighbor Environmental Board Meeting

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

**ACTION:** Notice of meeting.

**SUMMARY:** The next meeting of the Good Neighbor Environmental Board, a federal advisory committee that reports to the President and Congress on environmental and infrastructure projects along the U.S. border with Mexico, will take place in Washington, DC on January 23 and 24, 2002. It is open to the public. The meeting will be preceded by a new member orientation session on January 22.

**DATES:** On January 23, a day-long strategic planning session will begin at 8:30 a.m. and end at 5:30 p.m. On January 24, a special half-day session called Forecast 2002 will begin at 8 a.m. and end at 12 noon. The pre-meeting orientation session for new members will take place from 4–6 p.m. on January 22.

**ADDRESSES:** The meeting site is the Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008. The closest metro is Woodley Park-Zoo on Connecticut Avenue.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Koerner, Designated FederalOfficer for the Good Neighbor Environmental Board, Office of Cooperative Environmental Management, Office of the Administrator, USEPA, MC1601A, 1200 Pennsylvania Ave. NW, Washington, DC 20004, (202) 564–1484, *koerner.elaine@epa.gov.*

*Meeting Access:* Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the Designated Federal Officer at least five business days prior to the meeting so that appropriate arrangements can be made.

**SUPPLEMENTARY INFORMATION:**

## Agenda

The strategic planning session, scheduled for all day on January 23, is the Board's annual routine planning session in which it determines priorities and processes for the coming year. The Forecast 2002 session, scheduled for the morning of January 24, will consist of substantive briefings from senior-level border region specialists and a public comment session.

## Public Attendance

The public is welcome to attend all portions of the meeting. Members of the public who plan to file written statements and/or make brief (suggested 5-minute limit) oral statements at the public comment session are encouraged to contact the Designated Federal Officer for the Board prior to the meeting.

## Background

The Good Neighbor Environmental Board meets three times each calendar year at different locations along the U.S.-Mexico border and also holds an annual strategic planning session. It was created by the Enterprise for the Americans Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. The U.S. Environmental Protection Agency gives notice of this meeting of the Good Neighbor Environmental Board pursuant to the Federal Advisory Committee Act (Public Law 92–463).

**Elaine M. Koerner,**

*Designated Federal Officer.*

[FR Doc. 01–32102 Filed 12–28–01; 8:45 am]

BILLING CODE 6560–50–P

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# ENVIRONMENTAL PROTECTION AGENCY

**[OPP–30462A; FRL–6815–2]**

## Pesticide Product Registrations; Conditional Approval

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

**ACTION:** Notice.

**SUMMARY:** This notice announces Agency approval of applications submitted by Eco Soil Systems, Inc., to conditionally register the pesticide product AtEzeTM containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:** By mail: Anne Ball, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8717; e-mail address: ball.anne@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br><br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access a fact sheet which provides more detail on this registration, go to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/, and select ''fact sheet.''

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30462A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which

includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, Arlington, VA (703) 305–5805. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

## II. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7, that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of *Pseudomonas* chlororaphis strain 63–28, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Pseudomonas chlororaphis* strain 63–28 during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

## III. Conditionally Approved Registrations

EPA issued a notice, published in the **Federal Register** of November 25, 1998 (63 FR 65202) (FRL–6038–8), which announed that Agrium Inc., 402–15 Innovation Blvd., Saskatoon, Saskatchewan Canada S7N 2X8, had submitted an application to register the pesticide product AtEze ™, (EPA file symbol 70724–E), containing the active ingredient *Pseudomonas chlororaphis* strain 63–28 at 1.15% an ingredient not included any previously registered product. The current registrant for this product is Eco Systems, Inc., 10740 Thornmint Rd., San Diego, CA 92127. This product is limited for use as a direct application.

The application was approved on September 28, 2001, as AtEze™ (EPA Registration No. 70688–2) for use as a soil drench of contained plants for greenhouse ornamental and vegetable crops.

## List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 19, 2001.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 01–32108 Filed 12–28–01; 8:45 am]

BILLING CODE 6560–50–S

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# ENVIRONMENTAL PROTECTION AGENCY

**[OPP–30518; FRL–6813–7]**

## Pesticide Products; Registration Applications

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

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments, identified by the docket control number OPP–30518, must be received on or before January 30, 2002.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30518 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), listed in the table below:

| Regulatory Action Leader | Mailing address | Telephone number and e-mail address | File symbol |
|---|---|---|---|
| Anne Ball | 1200 Pennsylvania Ave., NW., Washington, DC 20460 | (703) 308–8717; Ball.Anne@epa.gov | 7501–ROE and 7501–ROR |
| Susanne Cerrelli | Do. | (703) 308–9525; cerrelli.susanne@epa.gov | 74200–E and 74200–R |

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS Codes | Examples of Potentially Affected Entities |
|---|---|---|
| Industry | 111 | Crop production |
| | 112 | Animal production |
| | 311 | Food manufacturing |
| | 32532 | Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–30518. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30518 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30518. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the application.

*Products Containing Active Ingredients Not Included in any Previously Registered Products*

1. File symbol: 7501-ROE. Applicant: Gustafson LLC, 1400 Preston Road, Suite 400, Plano, TX 75093. Product name: GB34 Technical Biological Fungicide. Product type: Fungicide. Active ingredient: *Bacillus pumilus* GB34 at 13.8%. Proposed classification/Use: For reformulating into end-use products by formulators in the manufacture of agricultural fungicide products.

2. File symbol: 7501-ROR. Applicant: Gustafson LLC, 1400 Preston Road., Suite 400, Plano, TX 75093. Product name: GB34 Concentrate Biological

Fungicide. Product type: Fungicide. Active ingredient: *Bacillus pumilus* strain GB34 at 0.28%. Proposed classification/Use: For use as a seed treatment for soybeans for supression of root diseases caused by *Rhizoctonia* and Fusarium.

3. File symbol: 74200-E. Applicant: Mycologic Incorporated, Department of Biology, University of Victoria, P.O. Box 3020, Victoria, BC Canada V8W. Product name: Chontrol TM Paste. Product type: Herbicide. Active ingredient: Chondrostereum purpureum isolate PFC 2139 at 0.67%. Proposed classification/Use: Biological herbicide for control of alders, aspen, and other hardwoods in rights of way and forests.

4. File symbol: 74200-R. Applicant: Mycologic Incorporated, Department of Biology, University of Victoria, P.O. Box 3020, Victoria, BC Canada V8W. Product name: CP-PFC 2139 Manufacturing Use Product. Product type: Herbicide. Active ingredient: Chondrostereum purpureum isolate PFC 2139 at 1.68%. Proposed classification/Use: Manufacturing use.

### List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 17, 2001.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 01–32106 Filed 12–28–01; 8:45am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[PF–1062; FRL–6813–8]**

## Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–1062, must be received on or before January 30, 2002.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1062 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Anne Ball, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8717; e-mail address: ball.anne@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br><br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–1062. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1062 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic

submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1062. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 14, 2001.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

### Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

### Gustafson LLC

*PP 1F6344*

EPA has received a pesticide petition (PP 1F6344) from Gustafson LLC, 1400 Preston Road, Suite 400, Plano, TX 75093, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the microbial pesticide *Bacillus pumilus* GB34 when used as a seed treatment in or on all raw agricultural commodities and on all food commodities after harvest.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Gustafson LLC has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Gustafson LLC and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

*A. Product Name and Proposed Use Practices*

The active ingredient *Bacillus pumilus* GB34 is formulated into the technical product, GB34 Technical Biological Fungicide and the end use product GB34 Concentrate Biological Fungicide. GB34 concentrate contains bacteria which colonize the developing root system of soybeans suppressing disease organisms such as *Rhizoctonia and Fusarium* that attack root systems. GB34 concentrate is used as a seed treatment before planting.

*B. Product Identity/Chemistry*

1. *Identity of the pesticide and corresponding residues. Bacillus pumilus* GB34 is a naturally occurring isolate from the soil.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* Two processing studies with soybeans were conducted. The studies showed no uptake of *Bacillus pumilus* GB34 beyond the seed hull. No residues were found in meal, oil, soymilk, or tofu.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An analytical method for enumeration of microorganisms is available but is not required since the petitioner is requesting an exemption from the requirement of a tolerance.

*C. Mammalian Toxicological Profile*

*Bacillus pumilus* GB34 was not found to be toxic or pathogenic from acute intravenous administration of $1.1 \times 10^7$ cfu of technical grade material. The oral $LD_{50}$ of GB34 technical was greater than 5,000 milligrams/kilograms (mg/kg) of body weight. GB34 technical was classified non-irritating to the skin and mildly irritating to the eye in primary skin irritation and eye irritation studies. The oral $LD_{50}$ of GB34 concentrate was greater than 5,000 mg/kg of body weight. GB34 concentrate was classified as non-irritating to the skin and minimally irritating to the eye in primary skin irritation and eye irritation studies. An avian oral pathogenicity and toxicity study in northern Bobwhite showed no evidence of pathogenicity during gross necropsy. The no observed adverse effect level (NOAEL) was approximately $3.4 \times 10^{11}$ cfu/kg/day for 5 days.

*D. Aggregate Exposure*

1. *Dietary exposure*—i. *Food. Bacillus pumilus* GB34 does not exhibit any

mammalian toxicity. Therefore, any dietary exposure would not be harmful to humans. Also *Bacillus pumilus* GB34 is a naturally occurring, ubiquitous microorganism indigenous to the United States.

ii. *Drinking water*. *Bacillus pumilus* is found in the soil and the use rate of GB34 concentrate is 0.1 ounces per 100 pounds of seed, equivalent to 1.7 grams per acre. *Bacillus pumilus* GB34 is unlikely to leach from the treated seed and would not be distinguishable from other naturally occurring *Bacillus pumilus*.

2. *Non-dietary exposure*. As a commercial seed treatment for soybeans, the general population, including infants and children, will have a very low possibility of exposure. Occupational exposure will be limited to employees in commercial facilities handling the seed treatment product. Commercial seed treating equipment minimizes occupational exposure. Wearing protective equipment will also minimize occupational exposure. Non-dietary exposure would not be expected to pose a quantifiable risk.

*E. Cumulative Exposure*

The product strain belongs to the bacterial genus of *Bacillus*. *Bacillus pumilus* GB34 may have a similar mode of action in mammals as *Bacillus subtilis* that has been shown to be non-toxic and non-pathogenic in mammalian species. A similar mode of action of *Bacillus pumilus* GB34 and *Bacillus subtilis* would not be expected to result in an increased adverse effect since both were shown to be non-toxic and non-pathogenic in intravenous toxicity and pathogenicity studies.

*F. Safety Determination*

1. *U.S. population*. Based on the low treating rate of seed treatment use, little evidence of toxicity or pathogenicity and limited exposure potential, Gustafson LLC believes there is a reasonable certainty of no harm to the U.S. population in general from aggregate exposure to *Bacillus pumilus* GB34 residue from all anticipated dietary and non-dietary exposures.

2. *Infants and children*. Based on the lack of toxicity and low exposure there is a reasonable certainty that no harm to infants, children or adults will result from aggregate exposure to *Bacillus pumilus* GB34.

*G. Effects on the Immune and Endocrine Systems*

Gustafson LLC has no information to suggest that *Bacillus pumilus* GB34 will have any effect on the immune and endocrine systems.

*H. Existing Tolerances*

There are no existing tolerances for *Bacillus pumilus* GB34.

*I. International Tolerances*

Gustafson LLC is not aware of any international tolerances, exemptions from tolerance or maximum residue levels for *Bacillus pumilus* GB34.

[FR Doc. 01–32109 Filed 12–28–01; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7123–4]**

## Project Work Plan for Revised Air Quality Criteria for Ozone and Related Photochemical Oxidants

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

**ACTION:** Notice of availability of external review draft.

**SUMMARY:** This notice announces the availability of the External Review Draft of a document, Project Work Plan for Revised Air Quality Criteria for Ozone and Related Photochemical Oxidants, NCEA–R–1068, prepared by the Office of Research and Development of the U.S. Environmental Protection Agency (EPA). The purpose of this document is to describe the managerial procedures for revising EPA's Air Quality Criteria for Ozone and Related Photochemical Oxidants, EPA/600/P–93/004aF,bF,cF, July 1996. This External Review Draft of the Project Work Plan will be reviewed by the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board and will be revised in light of CASAC's review and comments received from the general public. Information on the date and location of the CASAC public review meeting (likely in March 2002) will be published in a future **Federal Register** notice. The plan may be modified and amended from time to time, as necessary, to reflect actual project requirements and progress. As a result, any proposed schedules and outlines, or any lists of technical coordinator assignments, authors, or reviewers are subject to change.

**DATES:** Anyone who wishes to comment on this document may do so in writing by February 15, 2002.

**ADDRESSES:** To obtain a copy of the Project Work Plan for Revised Air Quality Criteria for Ozone and Related Photochemical Oxidants (External Review Draft), NCEA–R–1068, contact Diane H. Ray, National Center for Environmental Assessment-RTP Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–3637; facsimile: 919–541–1818; E-mail: ray.diane@epa.gov. Internet users may obtain a copy from the EPA's National Center for Environmental Assessment (NCEA) home page. The URL is http://www.epa.gov/ncea/.

Send the written comments to the Project Manager for Ozone Project Work Plan, National Center for Environmental Assessment-RTP Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Raub, National Center for Environmental Assessment-RTP Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–4157; facsimile: 919–541–1818; E-mail: raub.james@epa.gov.

Dated: December 20, 2001.

**George W. Alapas,**

*Acting Director, National Center for Environmental Assessment.*

[FR Doc. 01–32089 Filed 12–28–01; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7123–5]**

## Research Needed To Improve Health and Ecological Risk Assessment for Ozone

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

**ACTION:** Notice of availability of external review draft.

**SUMMARY:** This notice announces the availability of the Second External Review Draft of a document, Research Needed to Improve Health and Ecological Risk Assessment for Ozone, EPA/600/R–98/031B, prepared by the Office of Research and Development of the U.S. Environmental Protection Agency (EPA). The purpose of this document is to identify the scientific areas in which research is most needed to improve health and ecological risk assessment in the process of setting National Ambient Air Quality Standards for ozone. Many of the research needs identified and discussed in this document became apparent during preparation of the Air Quality Criteria for Ozone and Related Photochemical Oxidants, EPA/600/P–93/004aF,bF,cF, July 1996. The First External Review Draft of this research needs document was reviewed by the Clean Air Scientific Advisory Committee (CASAC)

of EPA's Science Advisory Board, on November 16, 1998, in Chapel Hill, NC. This Second External Review Draft has been prepared in light of CASAC's comments at that time and will be reviewed by CASAC (likely in March 2002), with date and location of the CASAC public review meeting to be announced in a future **Federal Register** notice. This document is intended to serve as a general guide to planning and conducting needed research on ambient ozone. The document intentionally makes no attempt to recommend specific research studies or programs.

**DATES:** Anyone who wishes to comment on this document may do so in writing by February 15, 2002.

**ADDRESSES:** To obtain a copy of the Research Needed to Improve Health and Ecological Risk Assessment for Ozone (External Review Draft) 2001, EPA/600/R–98/031B, contact Diane H. Ray, National Center for Environmental Assessment-RTP Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–3637; facsimile: 919–541–1818; E-mail: ray.diane@epa.gov. Internet users may obtain a copy from the EPA's National Center for Environmental Assessment (NCEA) home page. The URL is http://www.epa.gov/ncea/.

Send the written comments to the Project Manager for Ozone Research Needs, National Center for Environmental Assessment-RTP Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert Chapman, National Center for Environmental Assessment-RTP Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–4492; facsimile: 919–541–1818; E-mail: chapman.robert@epa.gov.

Dated: December 20, 2001,

**George W. Alapas,**

*Acting Director, National Center for Environmental Assessment.*

[FR Doc. 01–32090 Filed 12–28–01; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–51980; FRL–6817–2]**

## Certain New Chemicals; Receipt and Status Information

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

**ACTION:** Notice.

**SUMMARY:** Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from November 9, 2001 to November 30, 2001, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

**DATES:** Comments identified by the docket control number OPPTS–51980 and the specific PMN number, must be received on or before January 30, 2002.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51980 and the specific PMN number in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'','' Regulations and Proposed Rules, and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51980. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B– 607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51980 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is

open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51980 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from November 8, 2001 to November 30, 2001, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

## III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 33 PREMANUFACTURE NOTICES RECEIVED FROM: 11/09/01 TO 11/30/01

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–02–0072 | 11/14/01 | 02/12/02 | CBI | (S) Industrial uv coatings and inks | (G) Acrylate ester |
| P–02–0073 | 11/13/01 | 02/11/02 | CBI | (G) Pressure sensitive adhesive | (G) Acrylic copolymer |
| P–02–0074 | 11/14/01 | 02/12/02 | CBI | (G) Open non-dispersive use | (G) Polyacrylic resin, based on methyl methacrylate |
| P–02–0075 | 11/14/01 | 02/12/02 | Dow Corning Corporation | (S) Coating base polymer; sealant base polymer | (G) Polyalkylene-vinyldimethoxymethylsilane polymer |
| P–02–0076 | 11/14/01 | 02/12/02 | CBI | (G) An ingredient in polyurethane finishes | (G) Polyurethane prepolymer |
| P–02–0077 | 11/09/01 | 02/07/02 | BASF Corporation | (S) Processing aid for leather tanning | (G) Counter ion of vegetable oil, oxidized and sulfited |
| P–02–0078 | 11/13/01 | 02/11/02 | CBI | (G) Resin coating | (G) Polyester resin |
| P–02–0081 | 11/14/01 | 02/12/02 | CBI | (G) Polymeric binder | (G) Styrene-methacrylate copolymer |
| P–02–0086 | 11/14/01 | 02/12/02 | CBI | (G) Chemical intermediate | (G) Polyester polyol |
| P–02–0087 | 11/09/01 | 02/07/02 | Quest International Fragrances Co. | (S) Fragrance raw material | (S) Cyclopentanol, 2-cyclopentylidene* |
| P–02–0088 | 11/15/01 | 02/13/02 | Dow Corning Corporation | (S) Silicone textile treatment | (G) Alkyl silsesquioxane |
| P–02–0089 | 11/15/01 | 02/13/02 | Dow Corning Corporation | (S) Silicone textile treatment | (G) Alkyl silsesquioxane |
| P–02–0090 | 11/15/01 | 02/13/02 | FMC Corporation | (G) Open non-dispersive use | (G) Mixed metal oxide |

I. 33 PREMANUFACTURE NOTICES RECEIVED FROM: 11/09/01 TO 11/30/01—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–02–0091 | 11/19/01 | 02/17/02 | Dow Corning Corporation | (S) Uv curable coating | (G) Vinylalkoxysilyl-terminated polyisobutylene |
| P–02–0092 | 11/13/01 | 02/11/02 | CBI | (G) Open, non-dispersive use as an emulsifying agent. | (S) Poly(oxy-1,2-ethanediyl), alpha-(2-ethylhexyl)-omega-hydroxy-, 2-hydroxy-1,2,3-propanetricarboxylate |
| P–02–0093 | 11/13/01 | 02/11/02 | CBI | (G) Open, non-dispersive use as an emulsifying agent. | (S) Poly(oxy-1,2-ethanediyl), alpha-hydro-omega-hydroxy-, mono-$C_{10-16}$-alkyl ethers, citrates |
| P–02–0094 | 11/13/01 | 02/11/02 | CBI | (G) Open, non-dispersive use as an emulsifying agent. | (S) Poly(oxy-1,2-ethanediyl), alpha-hydro-omega-hydroxy-, mono-$C_{16-18}$-alkyl ethers, citrates |
| P–02–0095 | 11/09/01 | 02/07/02 | CBI | (G) Photo acid generator | (G) Substituted pyridine |
| P–02–0096 | 11/19/01 | 02/17/02 | CBI | (G) Open, non-dispersive use. | (G) Acid functional acrylic polymer |
| P–02–0097 | 11/19/01 | 02/17/02 | CBI | (G) Additive for coatings, inks, adhesives and composites. | (G) Metallic diacrylate |
| P–02–0098 | 11/19/01 | 02/17/02 | CBI | (G) Chemical intermediate | (G) Cyclohexene-carboxylic acid, [(dipropenylamino)carbonyl]-, (1r, 6r)-rel- |
| P–02–0099 | 11/20/01 | 02/18/02 | CBI | (G) Open, non-dispersive use. | (G) Polyester resin |
| P–02–0100 | 11/20/01 | 02/18/02 | CIBA Specialty Chemicals Corporation | (S) Antioxidant for polymers | (G) Substituted o-cresol |
| P–02–0101 | 11/20/01 | 02/18/02 | CBI | (G) Chemical process intermediate (a destructive use) | (G) Substituted pyridinedicarboxylic acid |
| P–02–0102 | 11/27/01 | 02/25/02 | CBI | (G) Petroleum lubricant additive | (G) Alkylbenzene sulfonate |
| P–02–0103 | 11/28/01 | 02/26/02 | CBI | (G) Colorant for printing inks | (G) Polyimide terminated, polyester / polyamide graft to styrene / acrylic polymer |
| P–02–0104 | 11/28/01 | 02/26/02 | Arteva Specialties S.A.R.L. d/b/a Kosa | (S) Structural material for production of textile fiber | (G) Modified polyester |
| P–02–0105 | 11/28/01 | 02/26/02 | BASF Corporation | (S) Protective colloid | (S) 1,3-benzenedicarboxylic acid, 5-sulfo-, monosodium salt, polymer with 1,3, benzenedicarboxylic acid, 1,4-benzenedicarboxylic acid, 1,2-ethanediol, 2,2′-[1,2-ethanediylbis(oxy)]bis[ethanol] and 2,2′-oxybis[ethanol] |
| P–02–0106 | 11/30/01 | 02/28/02 | CBI | (G) Open, non-dispersive(catalyst) | (G) Amino alkanol ester |
| P–02–0107 | 11/29/01 | 02/27/02 | CBI | (G) Dewaxing aid | (G) Alkyl methacrylates, alkyl acrylates copolymer |
| P–02–0108 | 11/30/01 | 02/28/02 | CBI | (S) Polyurethane adhesive | (G) Aromatic polyester polyurethane |
| P–02–0109 | 11/30/01 | 02/28/02 | CBI | (G) | (G) Quaternary salt |
| P–02–0110 | 11/30/01 | 02/28/02 | CBI | (S) Manufacturing of semiconductors | (S) Tantalum, tris(n-ethylethanaminato)[2-methyl-2-propanaminato(2-)]-, (t-4)- |

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 14 NOTICES OF COMMENCEMENT FROM: 11/09/01 TO 11/30/01

| Case No. | Received Date | Commencement/ Import Date | Chemical |
|---|---|---|---|
| P–00–0355 | 11/13/01 | 10/17/01 | (S) Acetic acid, chloro-, sodium salt, compound with 4-ethenylpyridine homopolymer |
| P–00–0902 | 11/30/01 | 11/14/01 | (G) Epoxy polyamine adduct |
| P–00–0985 | 11/21/01 | 10/31/01 | (G) Aliphatic polyether polyurethane |
| P–01–0007 | 11/27/01 | 11/03/01 | (G) Aliphatic polycarboxylic acid, metal salt |
| P–01–0167 | 11/30/01 | 11/20/01 | (G) Substituted piperidinamine |
| P–01–0465 | 11/19/01 | 10/18/01 | (G) Cycloalkene-1-alkanal tetramethyl |
| P–01–0499 | 11/19/01 | 11/05/01 | (G) Mercaptoalkyl alcohol |
| P–01–0500 | 11/19/01 | 11/05/01 | (G) Distillation residues from reaction product of alkyl alcohol with hydrogen sulfide |
| P–01–0535 | 11/14/01 | 11/03/01 | (G) Acrylic copolymer |
| P–01–0677 | 11/09/01 | 10/08/01 | (G) Polyalkoxylated intermediate |

II. 14 NOTICES OF COMMENCEMENT FROM: 11/09/01 TO 11/30/01—Continued

| Case No. | Received Date | Commencement/ Import Date | Chemical |
|---|---|---|---|
| P–01–0693 | 11/14/01 | 11/01/01 | (G) Polyester resin |
| P–01–0696 | 11/19/01 | 10/26/01 | (G) Blocked aromatic isocyanate |
| P–01–0747 | 11/26/01 | 10/24/01 | (G) Silicone polymer |
| P–98–0098 | 11/13/01 | 02/05/98 | (G) Blocked urethane prepolymer |

**List of Subjects**

Environmental protection, Chemicals, Premanufacturer notices.

Dated: December 18, 2001.

**Deborah A. Williams,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 01–32107 Filed 12–28–01; 8:45 am]

BILLING CODE 6560–50–S

## FEDERAL TRADE COMMISSION

### Second Public Conference: Factors That Affect Prices of Refined Petroleum Products

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice announcing public conference and requesting analytical and empirical papers and public comment.

**SUMMARY:** The Federal Trade Commission (''FTC'' or ''Commission'') will hold a second public conference on May 6–9, 2002, to examine issues concerning prices of refined petroleum products in the United States. The Commission held its first conference on August 2, 2001, where it heard from numerous interested parties about issues in this area that merit further examination. The further conference announced in this notice will enable the Commission to study in greater depth issues identified in the first public conference. The Commission also seeks analytical and empirical papers and public comment to inform this examination. The Commission invites experts from market participants, trade associations, consumer groups, academia, and other organizations to submit analysis and empirical research on the topics discussed in this notice. For any submitted empirical analysis or quantitative research, papers should include, if possible, the underlying data and reference or include any software programs used to generate results.

**DATES:** The public conference will be held on May 6–9, 2002. Sessions will be open to the public, without fee, and advance registration is not required. Seats in the conference room will be available on a first-come, first-served basis; limited overflow seating will be available to view the conference via closed-circuit television. Speakers will be by invitation only. Due to the expected high level of interest in this inquiry, speakers will be limited to brief presentations, with extensive questions and discussion with Commissioners and staff to follow. Further information regarding the agenda for the public conference will be posted on the FTC website.

Interested parties must submit analytical and empirical papers and comments by April 19, 2002.

**ADDRESSES:** The public conference will be held in Room 432 of the Federal Trade Commission Headquarters Building, 600 Pennsylvania Avenue, NW., Washington, DC 20580. All interested parties are invited to attend.

Any interested party may submit an analytical or empirical paper or comment relevant to the Commission's inquiry on or before April 19, 2002. To facilitate efficient review, each paper or comment should, if possible, be filed in electronic form (as a WordPerfect, Word, or ASCII text file), by attaching it to an e-mail message sent to the following e-mail box: *refinedpetroleumproducts@ftc.gov.* The email message to which the paper or comment is attached should include the caption ''Presentation on Factors that Affect Prices of Refined Petroleum Products;'' the name of the presenter; and the name and version of the word processing program used to create the comment. Papers or comments which are instead filed in paper form should include the same caption and the name of the presenter, and should be addressed to Donald S. Clark, Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** James Mongoven, Office of Policy and Evaluation, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Room 390, Washington, DC 20580; (202) 326–2879 (telephone); *jmongoven@ftc.gov.* (email). A detailed agenda and additional information relating to the public conference will be posted on the Commission's website, *http://www.ftc.gov/bc/gasconf/index.htm*, in advance of the conference.

**SUPPLEMENTARY INFORMATION:** Both crude oil and refined petroleum products prices have been volatile in recent years. The level and volatility of prices of refined petroleum products have resulted in increased public concern. In addition, the oil industry has experienced a number of significant changes in the 1990s, including substantial restructuring through mergers and joint ventures, changes in business practices, increased dependency on foreign crude sources, and new governmental regulations.

The Commission has extensive law enforcement authority with respect to the oil and refined petroleum products industries. Within the past year, the Commission has concluded two investigations into gasoline prices on the West Coast and in a number of Midwestern states. The Commission has also conducted antitrust investigations of a number of recent oil industry mergers, and, where appropriate, has issued orders requiring substantial divestitures to preserve competition.

Because of the importance to the American economy of issues raised in these investigations, the Commission has broadened its focus beyond law enforcement to study in more detail the central factors that can affect the level and volatility of refined petroleum products prices in the United States. The purpose of the two public conferences on this topic is to increase the transparency of competitive and other factors affecting the prices of refined petroleum products industries. Increased transparency will better inform consumers and policy-makers in the executive and legislative branches about factors affecting the level and volatility of prices for refined petroleum products. The Commission's efforts in this area will complement those of other government agencies, such as the U.S. Environmental Protection Agency (''EPA''), which recently released a report and a white paper studying the relationship of boutique fuel requirements to gasoline prices.

The Commission's public conference on August 2, 2001 served as a valuable

first step. During the initial conference, participants identified the issues that they found to be the most significant and that merit further study by the FTC. A transcript of and presentations to the initial conference are available on the Commission's website, *http://www.ftc.gov/bc/gasconf/index.htm*. This information has assisted the Commission in structuring the second public conference to focus in a comprehensive manner on the most relevant and important issues.

The Commission anticipates that the information gathered through these public conferences, analytical and empirical papers and comments received, and additional research, will lead to insights of importance to public policy concerning the level and volatility of prices of refined petroleum products. The Commission expects to summarize and discuss these insights in a public report.

**Specific Questions To Be Addressed**

Listed below is a series of questions about which the Commission seeks public comment. The list is not exhaustive, and it is not necessary to respond to each question.

*Supply and Transportation of Crude Oil*

1. How has the crude oil supply market changed since 1985?[1] How has the demand for crude oil changed since 1985? What is the level of proven reserves? Has the growth of proven reserves kept pace with increased demand? What has been the trend in domestic production? What are the pricing trends for domestic oil sources? To what extent do changes in domestic crude production contribute to changes in levels and volatility of refined product prices?

2. How has OPEC managed its supply? How do domestic oil companies and state-owned companies in OPEC countries interact? To what extent have the output policies of OPEC affected refined product prices in recent years? Has there been increased dependence on foreign sources of crude oil since 1985? To what extent, if any, has increased dependence on foreign crude sources by U.S. refineries contributed to increased levels and volatility of refined product prices? Have regulatory or other factors affected the costs or ability to import crude oil?

3. What is the relationship between crude oil prices (cost of feedstock) and prices for refined products at the wholesale and retail levels? Does this relationship vary by region of particular refineries? What happens to refined petroleum product prices when crude oil prices/inventories increase or decrease? How do inventories of crude oil affect the prices of refined petroleum products?

4. What is the empirical evidence since 1985 on the trends in the inflation-adjusted levels and volatility of crude oil prices?

5. What have been the trends in the costs and risks of developing new crude sources, either domestically or abroad? To what extent have changes in the costs and risks affected refined product prices? Has there been an increase in the absolute or relative difficulty of obtaining financing to support the development of new crude sources? Has there been a change in the relative risk/cost relationship of developing new crude sources? How has this affected the ability to obtain financing?

6. Have different types of crudes become more or less substitutable by U.S. refineries over time, and if so, has this affected refined product prices? Have crude oil markets become more or less regionalized over time, and have any such changes had an impact on refined product prices?

7. Are recent proposed/final environmental regulations (e.g., TIER II gasoline, low sulfur diesel) likely to affect the types of crude used by refiners and reduce refiner flexibility on the types of crude processed? If so, are existing refineries able to achieve compliance with these regulations? If not, what kind of capital investment will be needed to achieve compliance?

8. In any stage of crude oil supply, either domestically or abroad, is there any exercise of significant market power (other than the OPEC cartel) currently being observed? To what extent has any such exercise of significant market power affected refined product prices?

9. What is the effect of the Jones Act on transportation of crude oil? Does the Jones Act affect the price of crude oil to refiners? If so, what is the effect?

10. Have infrastructure investments in crude pipelines or marine transport of crude by either barge or ship kept pace with growth in demand? If not, why not? Are there policies that can be implemented that will create or reinforce incentives for efficient investment in pipeline or marine transport infrastructure to maintain adequate capacity, including reserve capacity in the event of a supply disruption?

11. What is the empirical evidence since 1985 on the trends of the inflation-adjusted levels and volatility in the prices of pipeline or marine transport of crude oil? Are these trends similar or dissimilar in various parts of the nation?

12. To what extent have changes in the cost or prices of pipeline or marine transport services of crude oil affected the prices of refined petroleum products at the wholesale or retail level?

13. Do we observe the exercise of significant market power in either the pipeline or marine transport of crude oil in any geographic area? To what extent has the exercise of significant market power affected the prices of refined products?

*Refining*

1. What factors have had the greatest effect on refining production costs and the price of refined petroleum products since 1985? Which such factors have been most responsible for any increase in the level or volatility of refined product prices?

2. How has the structure of the refining industry changed since 1985? Why did these changes occur? How have these changes affected capacity, utilization, production costs, prices for refined petroleum products, and overall competition in the industry? How has the role and quantity of imported refined petroleum products changed during this time? What has contributed to any such change?

3. What is the empirical evidence on the trends of the inflation-adjusted levels and volatility of refined product prices (for example, spot prices) at the bulk supply level? Are these trends similar or dissimilar in various parts of the nation? Are the trends similar for different refined products (e.g. diesel, gasoline, heating oil, jet fuel)?

4. Have infrastructure investments kept pace with growth in demand? If not, why not? Are there policies that can be implemented that will create or reinforce incentives for refiners to make efficient investments in infrastructure to maintain adequate capacity, including reserve capacity in the event of a supply disruption? Would such incentives vary as a function of size, capitalization, or debt level? How has the age of the industry infrastructure contributed to the need for and cost of the capital improvements?

5. In light of EPA's report and white paper, how have changes in environmental regulations affected refinery production in ways that have potential impacts on the prices of refined products? What has been the actual and historical effect of such regulations? Have changes in fuel specifications, both past and prospective, affected the competitiveness, fungibility, cost, and

[1] The Commission has chosen the 1985 date so it can update data received/obtained in conjunction with earlier Commission reports in this industry.

price stability of the gasoline and distillate fuel pools?

6. What capital investments have been needed to produce refined petroleum products (e.g., reformulated gasoline) in compliance with federal and state environmental and other regulations implemented since 1985? Have any refineries shut down because they found the needed capital improvements would be uneconomical? What capital investments will be needed to comply with federal and state regulations scheduled to take effect in the future?

7. How have environmental regulations affected refinery capacity for motor gasoline and other refined products? What effect have these regulations had on refinery utilization and the product slate, including the types and quantities of motor gasoline produced? How have these regulations affected production schedules, lead time, and the ability to respond to supply disruptions (e.g., alter product slates)?

8. What new motor gasoline transportation and storage issues have arisen due to new environmental regulations since 1985?

9. What effect has the increase in the number of different grades of motor gasoline (with varying emissions specifications and oxygenates) had on product markets and geographic markets for refined petroleum products? Are there specific grades of gasoline that are produced by just a few refiners? How has this affected the industry's ability to respond to supply disruptions? How rapidly do refined product prices typically react to changes in supply? Are there implications that one can draw from the response speed regarding the nature of competition in the market? What are the consequences and associated costs of producing an off-specification motor gasoline?

10. Are current environmental regulations, or those that are scheduled to take effect in the future, affecting refinery ownership? That is, are companies that own refineries making decisions to divest because of the regulations and the cost to comply? Is there a pattern of such sales and are the purchasers comparable to the sellers in terms of ability to raise capital to comply with environmental requirements and to expand capacity?

11. What factors explain the closure of several smaller refineries in the United States over the past decade? Why have some major oil firms sold refining capacity? Has the closure of smaller refineries changed the regional composition of refining capacity? If so, has this created infrastructure bottlenecks and affected price volatility?

12. Is there any exercise of significant market power currently being observed in particular aspects or geographic areas of the domestic refining industry? If so, to what extent has such exercise of significant market power affected prices of refined products?

13. Why is refinery capacity utilization at such high rates and are these rates likely to continue for a number of years into the future? What are the primary causes?

14. To what extent have refiners instituted just-in-time inventory of crude oil and/or refined products? What are the likely price effects of any changesin inventory behavior?

*Pipelines and Marine Bulk Transport*

1. How has the structure of the refined products pipeline industry changed since 1985? Why did these changes occur? How have these changes affected capacity, utilization, costs, and tariffs? What new geographic markets are being served?

2. Have infrastructure investments in product pipelines or marine bulk transport of refined product kept pace with growth in demand? If not, why not? Are there policies that can be implemented that will create or reinforce incentives for efficient investment in pipeline or marine transport infrastructure to maintain adequate capacity, including reserve capacity in the event of a supply disruption?

3. What is the empirical evidence since 1985 on the trends of the inflation-adjusted levels and volatility in the prices of pipeline or marine transport of refined petroleum product? Are these trends similar or dissimilar in various parts of the nation?

4. To what extent have changes in the cost or prices of pipeline or marine transport services affected the prices of refined petroleum products at the wholesale or retail level?

5. Is there any exercise of significant market power currently being observed in particular aspects of the domestic pipeline or marine transport industry? If so, to what extent has such distortion affected the prices of refined products at the wholesale or retail level?

6. What capital investments has the industry made in response to the 1990 Clean Air Act amendments for motor gasoline? What changes have been made to the infrastructure, including the pipelines and terminal/storage units? Why were these changes made and at what cost?

7. What are the impacts of the proliferation of different types of gasoline required by the EPA and the states on pipelines and bulk transport? Has competition been impacted in certain areas or regions and, if so, how? How have environmental regulations for motor gasoline during the last several years affected pipeline nomination procedures, lead time, batch configuration, batch sizes, and the number of products that must be shipped on a segregated basis? What effect have these changes had on the number, frequency, and length of shipment cycles? What effect have these changes had on a shipper's ability to substitute different products (e.g., conventional gasoline for diesel fuel) or different grades of the same product (e.g., 7.8 RVP conventional gasoline for 9.0 RVP conventional gasoline) for its nomination cycle? How (and why) do these effects differ for proprietary versus common carrier pipelines?

8. Has the pipeline industry experienced other problems or difficulties in connection with the 1990 Clean Air Act amendments for motor gasoline? How were these resolved and at what cost?

9. What regulations, other than environmental, have affected pipelines over the last decade?

10. Do any answers with respect to pipelines change depending on whether the pipeline is proprietary or a common carrier?

*Distribution and Marketing*

1. To what extent, and if so, why do variations in each of the following dimensions explain differences in wholesale or retail prices of gasoline or other refined petroleum products among different geographic markets?

a. market concentration;

b. share of market held by independent/unbranded marketers;

c. ownership/contractual arrangements (e.g., refiner-owned and-operated stations versus lessee-dealers or jobber-controlled outlets);

d. penetration of non-traditional gasoline retail outlets (e.g., gasoline sales at fast-food outlets and hypermarkets or ''super jobbers'');

e. consumer demographics;

f. perceptions of brand quality or other factors, such as ease of credit card use, amenities or the sales of products or services other than fuel at gasoline stations;

g. proximity to refining centers and sources of bulk supply;

h. labor, real estate or other local costs;

i. regulatory requirements, including local zoning ordinances, state or local laws affecting retail sales of gasoline, or environmental regulations affecting grades of gasoline offered.

2. What is the empirical evidence since 1985 on the trends of the inflation-adjusted levels and volatility in wholesale and retail prices for refined petroleum product? Are these trends similar or dissimilar in various parts of the nation? Are the trends similar for different refined products (e.g. diesel, gasoline, heating oil, jet fuel)?

3. Have infrastructure investments in terminals, wholesaling and retailing kept pace with growth in demand? If not, why not? Are there policies that can be implemented that create or reinforce the incentive for efficient investment in terminals, wholesaling and retailing infrastructure to maintain adequate capacity, including reserve capacity in the event of a supply shock?

4. To what extent have changes in the costs of providing terminaling, wholesaling, or retailing services affected the prices of refined petroleum products at the wholesale or retail level?

5. Have EPA regulations had any impact on refiners' inventory practices-for example, EPA fuel changeover policies? If so, have there been effects on retail prices?

6. To what degree do regulations-for example, environmental or zoning-affect the costs of providing wholesaling, terminaling or retailing services? What are the costs and difficulties of complying with regulations?

7. Have major distributors changed their geographic coverage significantly over the past two decades? Is there a trend toward greater or lesser regionalization of brands and, if so, what are the competitive implications of the trend?

8. Is there any exercise of significant market power currently being observed at either the terminal, wholesale or retail level in any geographic market? Are there significant impediments to terminal access and, if so, why? To what extent has the exercise of significant market power affected the prices of refined products at the wholesale or retail level?

9. Has the volatility and local dispersion (i.e. station-to-station or neighborhood-to-neighborhood) of gasoline prices increased in recent years, and if so, what are the causes, competitive and consumer implications of such increased volatility? Have premiums attributed to brands changed over time?

10. What are the competitive implications of the increasing scope, timeliness, and detail of micro data on retail prices and demand sensitivities (elasticities) that are available to gasoline wholesalers or retailers?

11. What is the competitive significance of refiners preventing jobbers to whom they sell from competing with the refiners to supply branded gasoline to independent dealers in localized geographic areas, a practice sometimes known as redlining? What is the competitive significance of refiners setting uniform wholesale prices for branded gasoline to company-operated and leased stations and independent open dealer stations in localized geographic areas, (a practice sometimes known as zone-pricing)? How, if at all, do these practices enhance efficiency? What is their effect, if any, on competition?

12. Do gasoline retailers engage in price discrimination? If so, how, and what is the overall effect of this practice? Do retailer margins vary among products (e.g., premium versus regular gasoline) or class of service (full-serve versus self-serve)? If so, why does this occur? To what extent (if any) does the ability of retailers or wholesalers to engage in price discrimination affect overall prices?

13. Have changes in retail formats produced important implications for the level or volatility of retail gasoline prices? For example, have the trends towards fewer, but larger service stations or the entry by non-traditional outlets such as those associated with mass merchandisers or grocery or convenience stores affected the degree of competition in retail gasoline markets? Have these format changes significantly affected the extent to which upstream price changes at the refinery level are translated into retail prices? Have these format trends and possible effects on retail prices been more pronounced in some geographic areas than others, and if so, what accounts for these differences? Has the increasing importance of convenience store and other non-fuel items typically sold by gasoline retailers affected pricing or other marketing decisions relating to gasoline sales? Have the changes in format and product mix at retail affected consumer loyalty to individual gasoline brands to any significant degree?

14. To what extent do wholesalers' inventory management practices affect gasoline price changes, especially in a volatile market? To what extent are inventory management practices themselves a reaction to market volatility?

15. What is the effect of each of the following categories of gasoline marketing regulation, and to what extent does each explain observed differences in gasoline prices among different markets?

a. retail divorcement;
b. self-service bans;
c. minimum markup requirements;
d. location/zoning restrictions;
e. Petroleum Marketing Practices Act; and
f. environmental requirements.

*Vertical Integration, Demand Side, Joint Arrangements and Other*

1. What is the degree of vertical integration across the various functional levels of the industry? For example, how extensively are refiners of crude integrated into the production or transport of crude, or how extensive is the integration of wholesaling and retailing of gasoline? What are quantitative measures of the degree of vertical integration in this industry?

2. Has the degree of vertical integration in the industry changed since 1985? If so, which functional levels are more likely or less likely to be combined under common ownership? Has the degree of vertical integration varied in different parts of the country or for different refined products?

3. To what extent does a desire to minimize costs explain integration or changes in the degree of integration? To what extent does vertical integration have an anticompetitive motivation, implementing, for example, strategies to foreclose competitors or to raise rivals' costs?

4. How can the effects of vertical integration upon unintegrated competitors be clearly distinguished from the effects upon ultimate consumers?

5. To what extent have changes in the degree of vertical integration since 1985 affected the level or volatility of refined product prices, particularly prices paid by ultimate consumers? In what ways do vertically-integrated firms have different incentives in responding to changes in input cost or demand, and to what extent do these different incentives manifest themselves to produce observable effects on gasoline prices?

6. Can the direction of causation between price and vertical integration be clearly distinguished? For example, if greater vertical integration is correlated with higher prices, is vertical integration one response to tight input supply and higher prices or, alternatively, are higher prices a result of integration?

7. To what extent can price spikes or price discontinuities be predicted? What are their costs to consumers? Are buffer stocks or maximum price movement rules needed? What are appropriate policy responses?

8. What factors characterize gasoline demand and demand elasticity? In what ways, if any, do gasoline demand and

demand elasticity vary among markets? How do short-run and long-run gasoline demand differ?

9. What is the role of joint ventures, or other cooperative arrangements such as product exchanges, at different functional levels? Has their use been associated with any significant market distortions at any functional level?

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 01–32052 Filed 12–28–01; 8:45 am]

**BILLING CODE 6750–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the President's Council on Bioethics

**AGENCY:** Department of Health and Human Services.

**ACTION:** Notice of meeting.

**SUMMARY:** The President's Council on Bioethics will hold its first meeting, to discuss its agenda and future activities.

**DATES:** Meetings will be held on Thursday, January 17, 2002, from 9 a.m. to 6 p.m., and Friday, January 18, 2002, from 8:30 a.m. to 1 p.m.

**ADDRESSES:** The meeting will take place in Washington, DC. The exact location will be announced at a later date and will posted at http://aspe.hhs.gov.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah McMahon, President's Council on Bioethics, Sixth Floor, 1801 Pennsylvania Avenue, NW., Washington, DC 20036, 202–296–4694.

**SUPPLEMENTARY INFORMATION:** The agenda of the meeting will include discussion of the future activities of the President's Council on Bioethics, a presidential advisory committee established by executive order to, among other things, conduct fundamental inquiry into the moral and human meaning of developments in biomedical science and technology. The meeting will include a period for comments from the public and any required administrative discussions and executive sessions.

Dated: December 21, 2001.

**Dean Clancy,**

*Executive Director, President's Council on Bioethics.*

[FR Doc. 01–32111 Filed 12–28–01; 8:45 am]

**BILLING CODE 4151–05–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–02–20]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDCAssistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

**Proposed Project**

Evaluation of the ACT (Adults and Children Together) Against Violence Community Training Program—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC). The goal of the ACT Against Violence Community Training Program is to make early violence prevention a central and ongoing part of a community's violence prevention efforts. The program involves a training curriculum developed by child development and violence prevention experts. The curriculum is designed to help communities: (1) Disseminate information and skills on violence prevention to adults who raise, care for, and teach young children; (2) identify and select early violence prevention programs, materials, and resources; (3) work in collaborative efforts established among community-based organizations; and (4) develop early childhood violence prevention action plans.

The purpose of the evaluation is to assess pilot implementations of the ACT Community Training Program in three communities: Monterey, CA; Randolph, NJ; and Kansas City, MO. The objectives of the evaluation are to (1) assess whether the Community Training Program is being successfully disseminated and implemented; (2) examine factors that affect successful dissemination, adoption, and implementation of the training program; (3) compare findings across the three sites; and (4) assess the involvement of the public health sector in each of the three sites.

Data collected for the evaluation will provide much-needed information on the dissemination and implementation of one of the successful strategies summarized in the Best Practices of Youth Violence Prevention. The results of the evaluation will assist the Division of Violence Prevention and the National Center for Injury Prevention and Control in carrying out CDC's mission of protecting the health of the United States public by providing leadership in preventing and controlling injuries through research, surveillance, implementation of programs, and communication. The evaluation will include semi-structured interviews with local and national program stakeholders (Forms 1 and 2), focus groups with a subset of ACT trainees (''facilitators'') during a site visit (Form 3), and a half-hour telephone survey with the universe of ACT trainees at 6 months with e-mail follow-ups at 2 months and 12 months (Form 4). In addition, we will follow-up with a small subset of ''adult community members'' reached by ACT trainees with a half-hour telephone survey (Form 5). Presented below is the estimated respondent burden for the telephone surveys, semi-structured interviews, and focus groups, respectively. There are no costs to respondents.

| Form | Type of respondent | Number of respondents | Number of reponses per respondent | Average Burden per response (in hrs.) | Total burden in hours |
|---|---|---|---|---|---|
| 1 | Local program stakeholders | 30 | 1 | 1 | 30 |
| 2 | National program stakeholders | 10 | 1 | 1 | 10 |
| 3 | Subset of ACT Trainees | 24 | 1 | 90/60 | 36 |
| 4 | Universe of ACT Trainees (professionals who work with families and children and have attended an ACT training). | 225 | 3 | 30/60 | 338 |
| 5 | Adult community members reached by ACT trainees | 30 | 1 | 30/60 | 15 |
| Total | | | | | 429 |

Dated: December 20, 2001.

**Nancy E. Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 01–32054 Filed 12–28–01; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30DAY–12–02]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

*Proposed Project:* Key Informant Interviews to Identify the Barriers to the Implementation of the New Targeted Testing and Treatment of Latent TB Infection Recommendations—NEW—Centers for Disease Control and Prevention (CDC), National Center for HIV, STD, and TB Prevention (NCSHTP). In April 2000, the Centers for Disease Control and Prevention (CDC) and the American Thoracic Society (ATS) issued new recommendations for targeted tuberculin testing and treatment regimens for persons with latent tuberculosis infection (LTBI.) CDC proposes to collect data to identify potential barriers to the acceptance, implementation, and adherence to targeted testing and treatment of LTBI guidelines.

The specific purpose of this research is:

A. Identify barriers to acceptance, implementation, and adherence to the new targeted testing and treatment of LTBI recommendations.

B. Identify possible education and communication messages, materials, and behavior change strategies to overcome those barriers.

C. Identify acceptable dissemination and media channels.

Approximately, one hundred key-informant telephone interviews with physicians who evaluate tuberculin skin test results and make treatment decisions for individuals with LTBI will be conducted. The target group will include physicians who work in the private sector and public sector in urban and rural areas from throughout the United States. The total burden hours for this data collection are 89 hours.

| Respondents | Number of respondents | Number of responses/respondent | Average burden/response (in hours) |
|---|---|---|---|
| Office staff (screening) | 480 | 1 | 5/60 |
| Physicians (interviews) | 100 | 1 | 30/60 |
| Physicians (verification) | 10 | 1 | 5/60 |

Dated: December 19, 2001.

**Nancy E. Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 01–32045 Filed 12–28–01; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30 DAY–11–02]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

*Proposed Project:* National Survey of Family Growth, Cycle 6 Main Study—New—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). The National Survey of Family Growth has been conducted periodically since 1973 by the National Center for Health Statistics, CDC. The first five cycles of the NSFG were based on interviews with women 15–44 years of age, to measure factors related to birth and pregnancy rates and maternal and infant

health. In Cycle 6, both women and men will be interviewed. The interviews with males 15–44 will address (1) Factors that affect entry into marriage, cohabitation, and fatherhood; (2) factors that affect the spread of Sexually Transmitted Diseases (STDs) and HIV (Human Immunodeficiency Virus, the virus that causes AIDS); and (3) factors that affect men's ability and willingness to carry out their fatherhood roles, including child support.

In 2002, the NSFG will interview a nationally representative sample of 11,500 women and 7,500 men 15–44 years of age. Black, Hispanic, and 15–24-year-old men and women will be sampled at a higher rate than others. A pretest has been conducted. All participation is completely voluntary and confidential. NSFG data help measure the demographics, health status, and behavior of the population of reproductive age (as well as those responsible for most STDs). The NSFG data from the 1995 survey have already been published in more than 60 published NCHS reports and articles in scientific journals. Besides NCHS, users of NSFG data include the Department of Health and Human Services (HHS) Office of Population Affairs, the National Institute for Child Health and Human Development, the CDC HIV/AIDS Prevention program, the CDC's Division of Reproductive Health, the Office of the Assistant Secretary for Planning and Evaluation (OASPE), and the Children's Bureau. Other users include Congress (for Section 905 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, among others); the Healthy People 2000 and 2010 initiatives; private researchers in demography, public health, maternal and child health, and state governments. The total annual burden for this data collection is 27,624 hours.

| Respondents | Number of respondents | Number of responses/ respondent | Avg. burden/ response (in hrs.) |
|---|---|---|---|
| Survey: screener | 55000 | 1 | 5/60 |
| Survey: males | 7500 | 1 | 1 |
| Survey: females | 11500 | 1 | 80/60 |
| Verification | 2500 | 1 | 5/60 |

Dated: December 19, 2001.

**Nancy E. Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 01–32046 Filed 12–28–01; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services (CMS)

### Notice of Hearing: Reconsideration of Disapproval of Ohio State Plan Amendment 98–020

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Notice of hearing.

**SUMMARY:** This notice announces an administrative hearing to reconsider the decision to disapprove Ohio State Plan Amendment (SPA) 98–020, on February 21, 2002, at 10:00 a.m., Chicago Regional Office Federal Building; Fifth Floor; Minnesota Room; 233 North Michigan Avenue; Chicago, Illinois 60601.

**CLOSING DATE:** Requests to participate in the hearing as a party must be received by the presiding officer by January 15, 2002.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scully-Hayes, Office of Hearings, CMS Suite L, 2520 Lord Baltimore Drive, Baltimore, Maryland 21244–2670, Telephone: (410)–786–2055.

**SUPPLEMENTARY INFORMATION:** This notice announces an administrative hearing to reconsider CMS's decision to disapprove Ohio SPA 98–020.

Section 1116 of the Social Security Act (the Act) and 42 CFR, part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. The Centers for Medicare & Medicaid Services (CMS) is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice. Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 day after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curia* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The issue is whether the claiming methodology Ohio proposed for determining allowable administrative costs is consistent with the requirements of the Social Security Act (the Act) and implementing regulations, including the issue of whether the methodology would adequately document such claims. As discussed below in more detail, the disapproval was based on findings that the proposed claiming methodology would permit the development of unallowable claims for Federal financial participation (FFP) primarily because it was based on time study that did not reflect Medicaid requirements.

Ohio submitted SPA 98–020 on December 24, 1998. This amendment contains an interagency agreement between the Ohio Department of Job and Family Services and the Ohio Department of Education through which the State would claim FFP under the Medicaid program for the costs of administrative activities performed by local education agencies in the State of Ohio. The CMS was unable to approve Ohio Medicaid SPA 98–020 because the methodology that would serve as the basis for the development of Medicaid administrative claims is flawed.

After review of the information and materials in the December 24, 1998, SPA submission and the June 25, 2001, response to our request for additional information, CMS determined that the requirements for administrative claiming in schools were not met. The primary basis for this conclusion is that the administrative claiming methodology was based on a time study that would permit development of unallowable Medicaid claims. The time study developed as part of this methodology includes: (1) Education-related activities that are not allowed under Medicaid; (2) activities at the enhanced FFP rate, which do not meet the requirements for Skilled

Professional Medical Personnel claiming; and (3) an activity code structure that does not meet the requirement to account for all the activities performed by time study participants. As a result, CMS found that SPA 98–020 did not comply with applicable Medicaid requirements, including those related to methods of administration under section 1902(a)(4) of the Act and implementing CMS regulations.

The CMS found that the flawed methodology means that the claim which would be authorized by SPA 98–020 are not reasonable and necessary for the proper and efficient administration of the State plan. This conclusion is based on the CMS review of the proposed activity code definitions, sampling methodology, documentation requirements, interagency agreement, and indirect cost rate. Therefore, after consulting with the Secretary as required by Federal regulation, CMS informed Ohio of its decision to disapprove this amendment.

The notice to Ohio announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: December 11, 2001.

**Thomas A. Scully,**

*Administrator, Center for Medicare & Medicaid Services.*

[FR Doc. 01–32110 Filed 12–28–01; 8:45 am]

BILLING CODE 4163–18–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 01N–0580]**

### Preparation for ICH Meetings in Brussels, Belgium, Including Progress on Implementation of the Common Technical Document; Notice of Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Food and Drug Administration is announcing a public meeting entitled ''Preparation for ICH Meetings in Brussels, Belgium, Including Progress on Implementation of the Common Technical Document (CTD)'' to solicit information and receive comments on the International Conference on Harmonisation (ICH) as well as the upcoming meetings in Brussels, Belgium. The purpose of the public meeting is to solicit public input prior to the next Steering Committee and Expert Working Group meetings in Brussels, Belgium, February 4 through 7, 2002, at which discussion of the implementation of the CTD and the future of ICH will continue.

*Date and Time*: The public meeting will be held on January 17, 2002, from 10:30 a.m. to 2 p.m.

*Location*: The public meeting will be held in the Center for Drug Evaluation and Research, Advisory Committee Conference Room, at 5630 Fishers Lane, rm. 1066, Rockville, MD 20857.

*Contact*: Kimberly Topper, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, FAX 301–827–6801, e-mail: Topperk@cder.fda.gov.

*Registration and Requests for Oral Presentations*: Send registration information (including name, title, firm name, address, telephone, and fax number), and written material and requests to make oral presentations, to the contact person by January 10, 2002.

If you need special accommodations due to a disability, please contact Kimberly Topper (address above) at least 7 days in advance.

*Transcripts*: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

**SUPPLEMENTARY INFORMATION:** The ICH of Technical Requirements for the Registration of Pharmaceuticals for Human Use was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health, Labor and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations. The ICH Steering Committee includes representatives from each of the ICH sponsors and Canadian Therapeutics Programme, and the European Free Trade Area. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions. The current ICH process and structure can be found on the Internet at http://www.ifpma.org/ich1.html.

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Oral presentations from the public meeting will be scheduled between approximately 11:30 a.m. and 1 p.m. Time allotted for oral presentations may be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person by January 10, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses, phone number, fax, and e-mail of proposed participants, and an indication of the approximate time requested to make their presentation.

The agenda for the public meeting will be made available on January 10, 2002, under Docket Number 01N–0580 at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 26, 2001.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 01–32123 Filed 12–26–01; 3:36 pm]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Children's Hospitals Graduate Medical Education (CHGME) Payment Program

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of Children's Hospitals Graduate Medical Education (CHGME) Payment Program conference calls.

**SUMMARY:** This document announces scheduled CHGME Payment Program conference calls for calendar year 2002. The purpose for these conference calls is to provide technical assistance related to the CHGME Payment Program.

**DATES:** The conference calls will be held on Friday, January 25, 2002, from 1:30 p.m. to 3:30 p.m. EST; Friday, April 26, 2002, from 1:30 p.m. to 3:30 p.m. EST; and Friday, October 25, 2002, from 1:30 p.m. to 3:30 p.m. EST.

**FOR FURTHER INFORMATION CONTACT:** Ayah E. Johnson, Ph.D., telephone: (301) 443–1058; Division of Medicine and Dentistry, Bureau of Health Professions, Room 9A–27, ParklawnBuilding, 5600 Fishers Lane, Rockville, Maryland 20857; or by e-mail at: *ajohnson@hrsa.gov.*

**SUPPLEMENTARY INFORMATION:** The CHGME Payment Program, as authorized by section 340E of the Public Health Service (PHS) Act (the Act) (42 U.S.C. 256e), provides funds to children's hospitals to address disparity in the level of Federal funding for children's hospitals (as opposed to other teaching hospitals) that result from Medicare funding for graduate medical education (GME). Pub. L. 106–310 amended the CHGME statute to continue the program until Federal fiscal year (FY) 2005.

The statute authorized $280 million for both direct and indirect medical education payments in FY 2000, $285 million in FFY 2001, and for each of the FFY 2002 through FFY 2005 such sums as necessary. In FFY 2000, Congress appropriated $40 million for the program and $235 million in FY 2001. These funds have supported over 4,000 residents receiving training in children's teaching hospitals in 31 States.

The agenda for the conference calls will include but not be limited to: (1) Welcome and opening comments; (2) news releases/updates; (3) reminders; and (4) ''on the horizon'' topics of interest. Time will also be available for a question and answer period. Agenda items will be determined as priorities dictate. Participating children's hospitals will be queried for relevant agenda issues/topics. Individuals are expected to register for participation in the conference call(s). Information about the Children's Hospitals Graduate Medical Education Payment Program can be found on the CHGME Web site (*bhpr.hrsa.gov/childrenshospitalgme*).

Prior to a scheduled conference call, a notification letter with detailed information for participation in the call and a registration form will be sent to representatives of participating hospitals. Other interested parties may obtain details for participating in the conference call by accessing the CHGME Web site.

Dated: December 21, 2001.

**James J. Corrigan,**

*Associate Administrator for Management and Program Support.*

[FR Doc. 01–32041 Filed 12–28–01; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Submission for OMB Review; Comment Request

**AGENCY:** Indian Health Service, DHHS.

**ACTION:** Information collection request for public comment: 30-day notice proposed collection: Stakeholder satisfaction with IHS tribal consultation.

**SUMMARY:** In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed information collection projects, the Indian Health Service (IHS) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection project was previously published in the **Federal Register** (66 FR 52774) and allowed 60 days for public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted to OMB.

**Proposed Collection**

A voluntary survey will be conducted of elected leaders representing federally recognized tribes, and any board member or executive director authorized to represent a tribal organization or an urban Indian health program to assess the level of customer (stakeholder) satisfaction with the agency's tribal consultation process.

*Title:* Stakeholder Satisfaction with IHS Tribal Consultation.

*Type of Information Collection Request:* New collection.

*Form Number(s):* None.

*Need and Use of Information Collection:* The information gathered will be used by management and staff to establish baseline data, to identify strengths and weaknesses in the current consultation process, to assess how well the processes are working, to make improvements that are practical and feasible, and to provide feedback to local tribal officials, health boards, tribal organizations, urban Indian health programs, and community members regarding stakeholder satisfaction with the agency's tribal consultation process.

*Frequency:* Annually.

*Affected Public:* Individuals, not-for-profit institutions and State, local or Tribal Government.

*Number of Respondents:* 605.

*Annual Number of Responses per Respondents:* 1.

*Total Annual Responses:* 605.

*Average Burden per response:* 20 minutes.

*Total Annual Hours Requested:* 202.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report for this collection of information.

**Request for Comment**

Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the IHS processes the information collection in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Direct Comments to OMB:* Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time, to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS. To request more information on the

proposed collection or to obtain a copy of the data collection plan(s) and/or instruction(s), contact: Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852.1601, call non-toll free (301) 443–5938, or send via facsimile to (301) 443–2613, or E-mail requests, comments, and return address to: *lhodahkwen@hqe.ihs.gov.*

*Comment Due Date:* Your comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: December 21, 2001.

**Michael E. Lincoln,**

*Deputy Director.*

[FR Doc. 01–32087 Filed 12–28–01; 8:45 am]

BILLING CODE 4160–16–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Information Collection Being Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act of 1995 (PRA)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** New Information Collection—State Certification of Expenditures.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) has submitted the information collection requirement described below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (PRA). The Service is soliciting comment and suggestions on the requirement as described below.

**DATES:** Interested parties must submit comments on or before January 30, 2002. OMB has 60 days to approve or disapprove an information collection, but may respond after 30 days. Therefore to ensure maximum consideration, OMB should receive public comments by the above date.

**ADDRESSES:** Interested parties should send comments and suggestions on the requirement to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Interior Desk Officer, New Executive Office Building, 725 17th Street, Washington, DC 20503, and they should send a copy of the comment to: Rebecca A. Mullin, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203 or *Rebecca Mullin@fws.gov* e-mail.

**FOR FURTHER INFORMATION CONTACT:** Tim Hess, (703) 358–1849, fax (703) 358–1837, or *Tim__Hess@fws.gov* e-mail.

**SUPPLEMENTARY INFORMATION:**

*Title of Forms:* Certification of Spending.

*Service Form Number:* 3–2197a.

This form currently has no OMB Control Number. The Service 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.

*Description and Use:* The Service administers grant programs authorized by the Federal Aid in Wildlife and Sport Fish Restoration Acts. The Wildlife and Sport Fish Restoration Programs Improvement Act of 2000 requires that States certify annually in writing that their expenditure of these Federal grant funds was in accordance with the appropriate Act. The Service must forward these certifications to Congress annually by December 31st each year.

The Service invited comments over a 60 day period in the **Federal Register** (Volume 66, Number 184, Page 48700–48703) starting September 21, 2001. No comments were received.

The Service submitted the following information collection requirements to OMB for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are again invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Frequency:* Annually.

*Description of Respondents:* States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the U.S. Virgin Islands, and American Samoa.

BILLING CODE 4310–55–M

OMB Control No. 1018-xxxx
Approval Expires xx/xx/xxxx

UNITED STATES
DEPARTMENT OF THE INTERIOR
U.S. Fish and Wildlife Service

## STATE CERTIFICATION OF SPENDING

for the Wildlife and Sport Fish Restoration Programs

for the Period _____ through _____

_____
(State)

_____
(Agency)

Pursuant to the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000 (Public Law 106-408), subsection 133(d)(1),

I CERTIFY that:

Amounts apportioned under the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669 et seq.) and the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 et seq.) were expended by the State in accordance with each of those Acts.

_____ _____
(Certifying Official's Signature) (Date)

_____
(Typed Name and Title)

Instructions
1. Fill in your State and Agency names at the top of the form.
2. Complete the Certification Period if it is blank or incorrect as it appears on the form.
3. Type the name and title of the Certifying Official on the designated line.
4. Sign and date the form.
5. Mail the completed form no later than November 29 each year to your U.S. Fish and Wildlife Service Regional Office.

Notes:
1. The *Certifying Official* is the Director of the State agency receiving the apportioned funds, or the person to whom the Director reports.
2. A *State*, as defined in 50 CFR 80.1(b), is any state of the United States; the territorial areas of Guam, the U.S. Virgin Islands, and American Samoa; the Commonwealth of Puerto Rico; the District of Columbia; and the Commonwealth of the Northern Mariana Islands.

FWS Form No. 3-2197a
9/2001

Paperwork Reduction Act and the Privacy Act – Notices

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.) and the Privacy Act of 1974 (5 U.S.C. 552a), please be advised that:

1. The gathering of information on fish and wildlife restoration expenditures is authorized by:
   – Pub. L. 106-408, Wildlife and Sport Fish Restoration Programs Improvement Act of 2000 (Section 133(d)(1)).

2. Submission of requested information is required and authorized under the above authority. Response is not required unless a currently valid Office of Management and Budget (OMB) control number is displayed.

3. There will be no routine annual publication of certification forms in the Federal Register under this program. However, the Fish and Wildlife Service may make the form available on its Federal Aid Web site.

4. Routine use disclosures may also be made:
   (a) to the U.S. Department of Justice when related to litigation or anticipated litigation,
   (b) as information indicating a violation or potential violation of a statute, regulation, rule, policy, or Court order to appropriate Federal, State, or local agency responsible for investigation or prosecuting such violation, or for enforcing or implementing the statute, regulation, rule, policy, or order,
   (c) in response to a request from a congressional office, or
   (d) in conjunction with audit of State records.

5. No personal information such as home address and telephone number, financial data, and personal identifiers (Social Security Number, birth date, etc.) are part of this certification form.

6. The public reporting burden for this information collection is 30 minutes. This burden estimate includes time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of the form to the Service Information Clearance Officer, U.S. Fish and Wildlife Service, Mail Stop 222, Arlington Square, U.S. Department of the Interior, 1849 C Street N.W., Washington, D.C. 20240.

Freedom of Information Act - Notice

There is no confidential information collected on this form. All information on this form may be made available to the public under FOIA [43 CFR 2].

Certification Processing Fee

There is no certification form processing fee.

Completion Time and Annual Response Estimate:

| Form name | Completion time per form | Annual response | Annual burden (In hours) |
|---|---|---|---|
| State Certification of Expenditures | ½ Hour | 60 Forms | 30 |

Dated: December 11, 2001.

**Rebecca Mullin,**

*Fish and Wildlife Service, Information Collection Clearance Officer.*

[FR Doc. 01–32092 Filed 12–28–01; 8:45 am]

BILLING CODE 4310–55–C

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Information Collection for Monitoring Species After Delisting Under the Endangered Species Act

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** The collection of information described below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of specific information collection requirements, related forms and explanatory material may be obtained by contacting the Information Collection Clearance Officer of the U.S. Fish and Wildlife Service at the address and/or phone numbers listed below (see **ADDRESSES**).

**DATES:** OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must submit comments on or before January 30, 2002.

**ADDRESSES:** Send your comments on specific requirements to the Office of Management and Budget, Attention: Department of the Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503, and to Rebecca A. Mullin, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Mail Stop 222-ARLSQ; 4401 N. Fairfax Drive, Arlington, VA 22203, 703/358–2287.

**FOR FURTHER INFORMATION CONTACT:** To receive a copy of the information collection approval request, explanatory

information and related forms, contact Rebecca A. Mullin, Information Collection Clearance Officer (see **ADDRESSES**). Questions related to the Endangered Species Act requirements for monitoring of recovered species may be directed to Renne Lohoefener, Chief, Division of Consultation, Habitat Conservation Plans, Recovery, and State Grants, 703/358–2171.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR Part 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OMB regulations at 5 CFR 1320.3(c) define the collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, record-keeping, or disclosure requirements imposed on 10 or more persons. Furthermore, 5 CRF 1320.3(c)(4) specifies that ''10 or more persons'' refers to the persons to whom a collection of information is addressed by the agency within any 12-month period. For the purposes of this definition, employees of the Federal government are not included in the definition of ''persons.'' Federal agencies 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.

Section 4(g) of the Endangered Species Act (ESA) requires that all species that are recovered and removed from the lists of endangered and threatened species (delisted) be monitored for a period of not less than 5 years. The purpose of this requirement is to detect any failure of a recovered species to sustain itself without the protections of the ESA. We, the U.S. Fish and Wildlife Service (Service) work with relevant State agencies and other species experts to develop appropriate plans and procedures for systematically monitoring recovered wildlife and plants. In many cases, collections of information from monitoring of recovered species will not require approval by OMB under the Paperwork Reduction Act because monitoring will require collection of information from less than 10 non-Federal persons per 12-month period.

We submitted the following 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. A previous 60-day notice on this information collection requirement was published in the **Federal Register** on October 10, 2001, (66 FR 51681) inviting public comment for 60 days. The comment period expired on December 10, 2001, and no comments were received. This notice provides an additional 30 days in which to comment on the following information. We are requesting that OMB grant a 3-year term of approval for these information collection activities. The information collection requirements in this submission implement the regulatory requirements of the Endangered Species Act (16 U.S.C. 1539).

On October 17, 1998, OMB approved information collection relative to monitoring of the American peregrine falcon. OMB control number 1018–0101, Information Collection Requirements for Monitoring Peregrine Falcons Once the Species is Delisted, estimated that we would request 20 responses per year, requiring 12 annual burden hours on the part of respondents. The American peregrine falcon was removed from the list of Endangered and Threatened Wildlife on August 25, 1999, but formal collection of monitoring data under section 4(g) of the ESA has not yet commenced. OMB approval under control number 1018–0101 expires on December 31, 2001.

We have consolidated its information collection requirements pursuant to the monitoring of all recovered species, including the American peregrine falcon, that will require identical questions posed to 10 or more non-Federal persons per 12-month period, thereby streamlining fulfillment of monitoring requirements for recovered species. Information collection meeting these criteria will usually be limited to species with large geographic ranges that include substantial amounts of non-Federal land. Although the ESA requires that monitoring of recovered species be conducted for not less than 5 years, the life history of some species will make it appropriate to monitor the species for a longer period of time in order to meaningfully evaluate whether the recovered species continues to maintain itself. In such cases, collection of monitoring data may occur on a multi-year interval (for example, data may be collected every second year, totaling eight information collections over a 15-year period). Information collection will commonly include data on species abundance, reproduction rates, and, in some cases, impacts of potential threats to the species. Data compilation and preparation of responses will generally be performed by professional biologists employed by Federal and State agencies and other organizations that have been involved in past species conservation efforts. Information requests may vary by respondent, and both requests and responses will primarily be in written format. Forms are not appropriate for this type of information collection, as effective requests and responses must accommodate variability in species across their geographic range and allow respondents latitude for full and accurate communication of the data.

We expect that, in addition to the American peregrine falcon, three to four other species may be removed from the list of threatened and endangered species due to recovery and will require collection of post-delisting monitoring information from 10 or more persons within a 12-month period before the end of 2004. Therefore, we are requesting a change to the currently approved information collection for the American peregrine falcon to include these additional species.

Annual burden estimates for collection of monitoring data for all recovered species pursuant to section 4(g) of the ESA, between January 1, 2002, and December 31, 2004, and requiring OMB approvals under the Paperwork Reduction Act are summarized below. Annual variation reflects monitoring of the American peregrine falcon in 2002 only (the next monitoring period for this species will occur in 2005) and anticipated increases in the number of other recovered species:

| Year | Estimated number of respondents per year | Estimated average time required per report (In hours) | Average total annual burden hours |
|---|---|---|---|
| 2002 ..... | 95 | 2 | 190 |
| 2003 ..... | 110 | 2 | 220 |
| 2004 ..... | 135 | 2 | 270 |

Comments are invited on (1) whether the collection of information described in this notice is necessary for the proper performance of monitoring of recovered species as prescribed in section 4(g) of the ESA, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; (4) ways to minimize the burden of the

collection of information on respondents. The information collections in this program will be part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: December 18, 2001.

**Rebecca A. Mullin,**

*Fish and Wildlife Service, Information Collection Clearance Officer.*

[FR Doc. 01–32122 Filed 12–28–01; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Receipt of Applications for Permit

**Endangered Species**

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

*Applicant:* Ronald L. Schauer, Danville, CA, PRT–051011

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Omaha's Henry Doorly Zoo, Omaha, NE, PRT–051046.

The applicant requests a permit to export semen samples from captive born Western lowland gorilla (*Gorilla gorilla*) to the University of Sydney, Australia, for the purpose of enhancement of the survival of the species through scientific research.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: December 14, 2001.

**Anna Barry,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 01–32057 Filed 12–28–01; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Aquatic Nuisance Species Task Force Western Regional Panel

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of workshop and meeting.

**SUMMARY:** This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Western Regional Panel and an Invasive Species Screening Process workshop. The meeting topics and workshop agenda are identified in the **SUPPLEMENTARY INFORMATION.**

**DATES:** The Invasive Species Screening Process workshop will be held from 8:30 a.m. to 4:30 p.m., Tuesday, January 8, 2002, and 9 a.m. to noon, Wednesday, January 9, 2002. The Western Regional Panel will meet from 1:00 p.m. to 5:00 p.m., Wednesday, January 9, 2002, and 9 a.m. to 4:30 p.m., Thursday, January 10, 2002.

**ADDRESSES:** The Invasive Species Screening Process workshop and the Western Regional Panel meeting will be held at the Hotel San Remo, 115 East Tropicana Avenue, Las Vegas, Nevada 89109. Phone 800–522–7366.

**FOR FURTHER INFORMATION CONTACT:** Tina Proctor, Aquatic Nuisance Species Coordinator, at 303–236–7862 ext 260 or by e-mail at bettina_proctor@fws.gov; or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at sharon_gross@fws.gov.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Western Regional Panel and an Invasive Species Screening Process workshop. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16U.S.C. 4701–4741). The purpose of the Invasive Species Screening Process workshop is to discuss methods for screening nonindigenous invasive species imported for sale or introduced into natural water bodies. A goal of the workshop is to bring affected parties together to discuss cooperative options to prevent the introduction of invasive species. Topics to be covered during the workshop include shipping industry perspective for the importation of invasive species; perspectives from nursery, pet, and aquaculture industries; Australia's invasive species screening program; Federal screening process and under development by the National Invasive Species Council and the ANS Task Force; an overview of screening programs in Washington, Oregon, and Hawaii; and a panel discussion on developing an invasive species screening process. The Western Regional Panel will discuss several topics including: Facilitation of State Aquatic Nuisance Species Management Plans; development of a rapid response plan; and development of a brochure and display; an update on aquatic nuisance species activities from individual states; a summary of the Invasive Species Screening Process workshop; a review of the new work plan and budget; NISA reauthorization; and updates on West Coast ballast water 100th Meridian initiative, and Lewis and Clark activities.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622 and will be available for public inspection during regular business hours, Monday through Friday.

Dated: December 17, 2001.

**Cathleen I. Short,**

*Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries and Habitat Conservation.*

[FR Doc. 01–32096 Filed 12–28–01; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

### Geological Survey

### Technology Transfer Act 1986; Notice

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of proposed Cooperative Research & Development Agreement (CRADA) negotiations.

**SUMMARY:** The United States Geological Survey (USGS) is contemplating

entering into a Cooperative Research and Development Agreement (CRADA) with Devon Energy Corporation to develop information on coal bed methane resources in North Central Louisiana.

*Inquiries:* If any other parties are interested in similar activities with the USGS, please contact Peter Warwick, 12201 Sunrise Valley Drive, MS 956, Reston, VA 21092, phone: (703) 648–6469.

**SUPPLEMENTARY INFORMATION:** This notice is submitted to meet the USGS policy requirements stipulated in Survey Manual Chapter 500.20.

December 5, 2001.

**P. Patrick Leahy,**

*Associate Director for Geology.*

[FR Doc. 01–32067 Filed 12–28–01; 8:45 am]

BILLING CODE 4310–Y7–M

## DEPARTMENT OF THE INTERIOR

### Geological Survey

### Technology Transfer Act of 1986; Notice

**AGENCY:** U.S. Geological Survey.

**ACTION:** Notice of proposed Cooperative Research & Development Agreement (CRADA) Negotiations.

**SUMMARY:** The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with OptiQuest Technologies, LLC to develop a water quality model and automated systems for quality control and visualization.

*Inquiries:* If any other parties are interested in similar activities with the USGS, please contact: Paul A. Conrads, USGS South Carolina District, Stephenson Center Suite, 129 720 Gracern Road, Columbia, SC 29210 phone: (803) 750–6140.

**SUPPLEMENTARY INFORMATION:** This notice is submitted to meet the USGS policy requirements stipulated in Survey Manual Chapter 500.20.

Dated: December 7, 2001.

**Robert M. Hirsch,**

*Associate Director for Water.*

[FR Doc. 01–32065 Filed 12–28–01; 8:45 am]

BILLING CODE 4310–Y7–M

## DEPARTMENT OF THE INTERIOR

### Geological Survey

### Technology Transfer Act of 1986; Notice

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of proposed Cooperative Research & Development Agreement (CRADA) Negotiations.

**SUMMARY:** The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with Sequoia Scientific, Inc. for development of a laser sensor system for collecting fluvial sediment data in rivers.

*Inquiries:* If any other parties are interested in similar activities with the USGS, please contact: John R. Gray, USGS Office of Surface Water, 415 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192; phone (703) 648–5318.

**SUPPLEMENTARY INFORMATION:** This notice is submitted to meet the USGS policy requirements stipulated in survey Manual Chapter 500.20.

Dated: December 7, 2001.

**Robert M. Hirsch,**

*Associate Director for Water.*

[FR Doc. 01–32066 Filed 12–28–01; 8:45 am]

BILLING CODE 4310–Y7–M

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Record of Decision (ROD) for the Environmental Impact Statement (EIS) on the Proposed Use of Floating, Production, Storage, and Offloading (FPSO) Systems on the Gulf of Mexico Outer Continental Shelf, Western and Central Planning Areas

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** ROD on the use of FPSO systems.

**SUMMARY:** The MMS has completed a ROD for the EIS on the proposed use of FPSO systems in the deepwater areas (generally beyond 650 feet or 200 meters water depth) of the Western and Central Planning Areas of the Gulf of Mexico Outer Continental Shelf.

**ADDRESSES:** The ROD has been posted on the MMS website http://www.mms.gov. Copies of the ROD are available upon request from the Public Information Office (MS 5034), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding the ROD should be directed to Ms. Deborah Cranswick, Leasing and Environment, at (504) 736–2744. The mailing address is Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

**SUPPLEMENTARY INFORMATION:** The MMS has examined the concept of allowing the use of FPSOs in the Central and Western GOM Planning Areas and found no compelling environmental reason why development and production plans proposing to use this method of production should not be submitted by the oil and gas industry for evaluation by the agency. The EIS prepared for MMS under contract found that FPSO systems do not pose a greater threat to the environment than do currently accepted development and production systems, given that proper mitigation measures, keyed to the specific proposed operations and location, be applied. Further technical and environmental evaluation will be required for specific FPSO proposals. The MMS will evaluate the potential emissions and impacts of any proposed use of an FPSO within 100 km of the Breton NWA, and will impose emission restrictions and mitigation requirements to ensure that no significant air quality impacts to the Class I area occurs from any proposed FPSO operations. Any proposed FPSO operations that are not within the range of operations evaluated in the programmatic EIS will require more extensive technical and environmental review to demonstrate equivalence to what was investigated by the EIS.

The MMS will defer to U.S. Coast Guard (USCG) jurisdiction and will not accept proposals for the use of FPSOs within the Lightering Prohibited Areas established by USCG (33 CFR Part 156 Subpart C) for 2 years. The 2-year period will allow additional discussions with USCG on the potential use and impacts of FPSO operations within the Lightering Prohibited Areas. The time will allow for a fuller discussion of what measures might be necessary to protect the environment should FPSOs be considered for use within the Lightering Prohibited Areas, and review of the applicability of the environmental assessment completed 10 years ago by USCG in support of the rulemaking that established the Lightering Prohibited Areas. The MMS will continue to work with USCG to delineate jurisdictional

issues based on the Memorandum of Understanding between the two agencies.

The ROD is the last step in the National Environmental Policy Act process. The ROD summarizes the proposed action and the alternatives evaluated in the EIS, the conclusions of the EIS impact analyses, and other information considered in reaching the decision.

Dated: December 13, 2001.

**Carolita U. Kallaur,**

*Associate Director for Offshore Minerals Management.*

[FR Doc. 01–32094 Filed 12–28–01; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## Outer Continental Shelf (OCS), Alaska Region, Cook Inlet, Oil and Gas Lease Sales 191 and 199 for Years 2004 and 2006

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Call for Information and Nominations and Notice of Intent (CALL/NOI) to prepare an Environmental Impact Statement (EIS).

**SUMMARY:** The Secretary's preliminary decision to consider two sales in the Cook Inlet area in the Proposed OCS Oil and Gas Leasing Program for 2002–2007 provides for the first sale to be held in 2004, with a second sale in 2006. The MMS has modified its prelease planning and decision process for proposed Cook Inlet sales included in the proposed program. This Call/NOI reflects that change and is in keeping with the Secretary's preliminary decision to analyze these two sales in a multi-sale EIS. The Secretary's preliminary decision is to offer only the Cook Inlet portion of the Cook Inlet/Shelikof Strait planning area as the program area for this 5-year program. The sale process for this first sale will require a minimum of 2½ years to complete. In order to meet the requirements of that schedule, we are issuing this Call/NOI at this time, recognizing that the final decision on the 2002–2007 5-year program has not been made and final delineation of the program areas and number of sales may change from that included in the proposed program.

The multi-sale review process is based on over 25 years of leasing in the Cook Inlet/Shelikof Strait area. The process will incorporate planning and analysis for two sales: Sales 191 and 199. From the initial step in the process (the Call for Information and Nominations) through the final EIS/Consistency Determination (CD) step, this process will cover multiple sale proposals. However, there will also be complete National Environmental Policy Act (NEPA), OCS Lands Act, and Coastal Zone Management Act coverage for each sale after the first sale—either an Environmental Assessment or Supplemental EIS, CD, and a proposed and final Notice of Sale. The environmental analysis and the CD for the subsequent sale, Sale 199, will focus primarily on new issues or changes in the State of Alaska's federally-approved coastal management plan.

This process will:

—Focus the environmental analysis by making impact types and levels that change between sales more easily recognizable for all reviewers,

—Result in new issues being more easily highlighted for the public,

—Eliminate issuance and public review of repetitive, voluminous EIS's for each sale a practice that has resulted in ''review burnout'' in Federal, state, local and tribal governments, and the public,

—Result in a more efficient and responsive application of NEPA.

This Call does not indicate a preliminary decision to lease in the area described below. Final delineation of the areas for possible leasing will be made at a later date in the presale process for each sale in compliance with the final 5-year program and with applicable laws including all requirements of the NEPA and the OCS Lands Act.

**DATES:** Nominations and comments must be received on or before February 14, 2002 in envelopes labeled ''Nominations for Proposed 2002–2007 Lease Sales in the Cook Inlet,'' or ''Comments on the Call for Information and Nominations for Proposed 2002–2007 Lease Sales in the Cook Inlet,'' as appropriate.

**FOR FURTHER INFORMATION CONTACT:** Please call Tom Warren at (907) 271–6691 in MMS's Alaska OCS Region regarding questions on the Call/NOI.

**SUPPLEMENTARY INFORMATION:**

### Call for Information and Nominations

*1. Authority*

This Call is published pursuant to the OCS Lands Act as amended (43 U.S.C. 1331–1356, (1994)), and the regulations issued thereunder (30 CFR 256); and in accordance with the Proposed OCS Oil and Gas Leasing Program 2002 to 2007.

*2. Purpose of Call*

The purpose of the Call is to gather preliminary information for the following tentatively scheduled OCS Oil and Gas Lease Sales in the Cook Inlet area:

| Sale No. | Tentative sale date |
|---|---|
| 191 | May 2004. |
| 199 | May 2006. |

Information and nominations on oil and gas leasing, exploration, and development and production within the Cook Inlet area are sought from all interested parties. This early planning and consultation step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCS Lands Act and regulations at 30 CFR 256.

Responses are requested relative to all sales included herein. This Call/NOI is being issued in accordance with the Proposed OCS Oil and Gas Leasing Program 2002 to 2007 released on October 26, 2001. The proposed program offers three options for leasing in the Cook Inlet area in the 2002–2007 5-year program: two sales, one sale, or no sales.

*3. Description of Area*

The area that is the subject of this Call is located offshore the State of Alaska in Cook Inlet as depicted on the map that accompanies this Call. This area consists of approximately 517 whole and partial blocks (about 2.5 million acres). A page size map of the area accompanies this Notice. A large scale Call map showing the boundaries of the area on a block-by-block basis is available without charge from the Records Manager at the address given below, or by telephone request at (907) 271–6438 or 1–800–764–2627. Copies of Official Protraction Diagrams (OPDs) are also available for $2 each.

Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska, 99508–4302, *akwebmaster@mms.gov*

*4. Instructions on Call*

The Call for Information Map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, at the above address.

The Call map delineates the area that is the subject of this Call. Respondents are requested to indicate interest in and comment on any or all of the Federal

acreage within the boundaries of the Call area that they wish to have included in each of the proposed sales in the Cook Inlet Call area.

If you wish to comment, you may submit your comments by any one of the following methods:

- You may mail comments to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99508–4302.
- You may also comment via e-mail to *CookInletMulti-Sale@mms.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: Comments on Call for Information and Nominations for Proposed 2002–2007 Lease Sales in the Cook Inlet'' and your name and return address in your Internet message.
- Finally, you may hand-deliver comments to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

A. *Areas of Interest to the Oil and Gas Industry.* Specific nominations are being sought regarding the oil and gas industry area(s) of interest. The MMS is soliciting nominations of blocks that are of significant industry interest for exploration and development and production.

Nominations must be depicted on the Call map by outlining the area(s) of interest along block lines. Nominators are asked to submit a list of whole and partial blocks nominated (by OPD and block number) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information.

Nominators also are requested to rank blocks nominated according to priority of interest (*e.g.,* priority 1 (high), or 2 (medium)). Blocks nominated that do not indicate priorities will be considered priority 3 (low). Nominators must be specific in indicating blocks by priority and be prepared to discuss their range of interest and activity regarding the nominated area(s). The telephone number and name of a person to contact in the nominator's organization for additional information should be included in the response. This person will be contacted to set up a mutually agreeable time and place for a meeting with the Alaska OCS Regional Office to present their views regarding the company's nominations.

B. *Relation to Coastal Management Plans (CMP).* Comments also are sought on potential conflicts with approved local coastal management plans that may result from the proposed sale and future OCS oil and gas activities. These comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Commenters are requested to list block numbers or outline the subject area on the large-scale Call map.

*5. Use of Information From Call*

Information submitted in response to this Call will be used for several purposes. Responses will be used to:

Help identify areas of potential oil and gas development
Identify environmental effects and potential use conflicts
Assist in the scoping process for the EIS
Develop possible alternatives to the proposed action
Develop lease terms and conditions/mitigating measures
Identify potential conflicts between oil and gas activities and the Alaska CMP

*6. Existing Information*

The MMS has acquired a substantial amount of information, including that gained through the use of traditional knowledge, on the issues and concerns related to oil and gas leasing in the Cook Inlet area.

An extensive environmental, social, and economic studies program has been underway in this area since 1975. The emphasis has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological and socio-cultural effects of oil and gas activities.

Information on the studies program, completed studies, and a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, by telephone request at (907) 271–6577, or by written request at the address stated under Description of Area. A request may also be made via the Alaska Region website at *www.mms.gov/alaska/ref/pubindex/pubsindex.htm.*

*7. Tentative Schedule*

The following is a list of tentative milestone dates applicable to sales covered by this Call:

MULTI-SALE PROCESS MILESTONES FOR PROPOSED 2002–2007 COOK INLET SALES

| | |
|---|---|
| Call/NOI published | December 2001. |
| Comments due on Call/NOI. | February 2002. |
| Area Identification | March 2002. |
| Draft EIS published | November 2002. |
| Public Hearings | January 2003. |
| Final EIS/Consistency Determination/Proposed Notice of Sale issued. | November 2003. |
| Governor's Comments due (Sale 191). | January 2004. |
| Final Notice of Sale published (Sale 191). | April 2004. |
| Sale 191 | May 2004. |

SALE-SPECIFIC PROCESS MILESTONES FOR PROPOSED 2002–2007 COOK INLET SALE 199

| | |
|---|---|
| Request for Information to Begin Sale 199 Process. | December 2004. |
| Area Identification | February 2005. |
| NEPA Review published | October 2005. |
| Proposed Notice and Consistency Determination. | December 2005. |
| Governor's Comments due (Sale 199). | February 2006. |
| Final Notice of Sale published. | April 2006. |
| Tentative Sale 199 | May 2006. |

**Notice of Intent To Prepare an Environmental Impact Statement**

*1. Authority*

The NOI is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the NEPA of 1969 as amended (42 U.S.C. 4321 *et seq.* (1988)).

*2. Purpose of Notice of Intent*

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the National Environmental Policy Act of 1969 (42

U.S.C. 4321 *et seq.*), MMS is announcing its intent to prepare a multi-sale EIS on the tentatively scheduled oil and gas lease sales in the Cook Inlet area off Alaska for the 5-year program period of July 2002 through June 2007. The EIS analysis will focus on the potential environmental effects of two sales, and exploration and development and production of the areas defined in the Area Identification procedure as the proposed areas of the Federal actions. Alternatives to the proposals which may be considered for each individual sale are to delay the sale, modify the sale, or cancel the sale. These and any additional alternatives developed through the process for each individual sale will be considered in the sale-specific decision process. This NOI also serves to announce the initiation of the scoping process for this EIS. Throughout the scoping process, Federal, State, tribal, and local governments and other interested parties aid MMS in determining the significant issues and alternatives to be analyzed in the EIS and the possible need for additional information.

*3. New EIS Procedure*

The MMS is proposing to prepare a single EIS for two proposed Cook Inlet sales tentatively scheduled with the first sale to be held in 2004 and the second sale in 2006. The resource estimates and scenario information on which the EIS analysis are based will be presented as a range of resources and activities that would encompass either of the two proposed sales in the Cook Inlet.

This proposal will provide several benefits. It will focus the NEPA process by making impact types and levels that change between sales more easily recognizable. New issues will be more easily highlighted for the decisionmakers and the public. The NEPA regulations at 40 CFR 1502.4 require federal agencies, as appropriate, to employ tiering and other methods to relate broad and narrow actions and ''to avoid duplication and delay.'' The regulations further define broad actions at § 1502.4(c) as actions that relate geographically, including actions occurring in the same general location, and generically, including actions which have relevant similarities such as impacts, alternatives, methods of implementation, media, or subject matter. Further guidance is given at 40 CFR 1502.20 which encourage agencies to tier their EIS's to ''eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review.''

The proposed actions analyzed in the EIS will be the two sales on the proposed 5-year schedule for the Cook Inlet area. The EIS will include an analysis of the environmental effects of holding two sales. The scenario will cover a range of resources and activities that will encompass both proposed actions. The second sale can then be compared to the initial analysis in an Environmental Assessment or supplemental EIS. Formal consultation with the public will be initiated for the second sale to obtain input to assist in the determination of whether or not the information and analyses in the original multi-sale EIS are still valid. A sale-specific Request for Information will be issued that will specifically describe the action for which we are requesting input. If the Secretary chooses to hold only one sale in Cook Inlet as part of the 5-year decision in June 2002, then the draft and final EIS's will be modified to evaluate a single sale.

*4. Instructions on Notice of Intent*

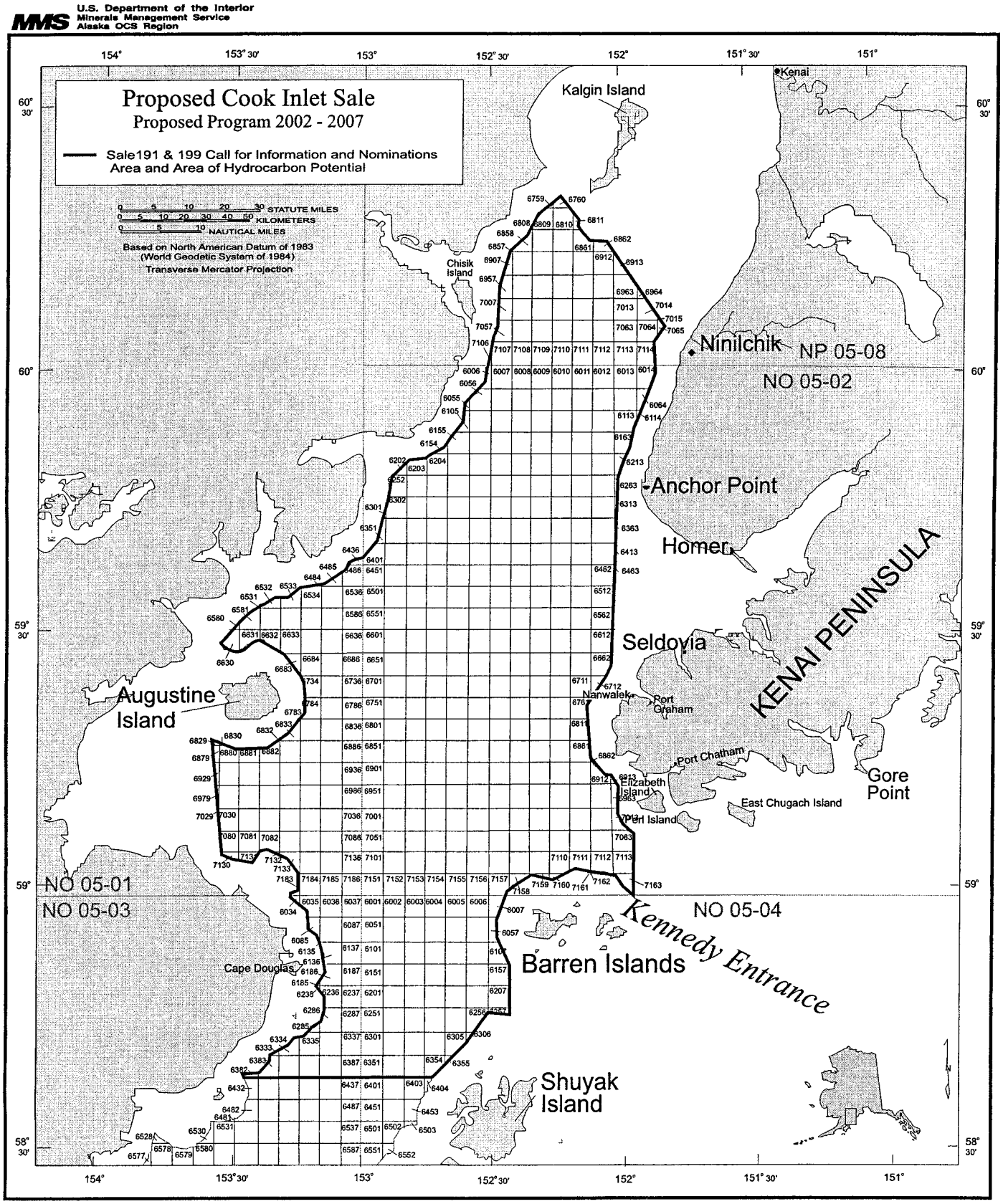
Federal, State, tribal, and local governments and other interested parties are requested to send their written comments on the Scope of the EIS, significant issues that should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under Instructions on Call above. Comments should be enclosed in an envelope labeled ''Comments on the Notice of Intent to Prepare an EIS on Proposed Cook Inlet Lease Sales included in the 5-Year Program, 2002–2007.'' Comments are due no later than 45 days from publication of this Notice. Scoping meetings will be held in appropriate locations to obtain additional comments and information regarding the scope of this EIS.

Dated: December 17, 2001.

**Lucy Querques Denett,**

*Acting Director, Minerals Management Service.*

BILLING CODE 4310–MR–P




[FR Doc. 01–32095 Filed 12–28–01; 8:45 am]

BILLING CODE 4310–MR–C

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–921 (Final)]**

### Folding Gift Boxes From China

### Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of folding gift boxes, provided for in subheadings 4819.20.00 and 4819.50.40 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

### Background

The Commission instituted this investigation effective February 20, 2001, following receipt of a petition filed with the Commission and Commerce by Harvard Folding Box Company, Inc., Lynn, MA, and Field Container Company, L.P., Elk Grove, IL. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of folding gift boxes from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 30, 2001 (66 FR 45864). The hearing was held in Washington, DC, on November 15, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 21, 2001. The views of the Commission are contained in USITC Publication 3480 (December 2001), entitled Folding Gift Boxes from China: Investigation No. 731–TA–921 (Final).

By order of the Commission.

Issued: December 21, 2001.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 01–32085 Filed 12–28–01; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the commission's rules of practice and procedure (19 CFR 207.2(f)).

## DEPARTMENT OF JUSTICE

### Bureau of Justice Statistics

**[OJP (BJS)–1342]**

### 2002 Census of Publicly Funded Forensic Crime Laboratories

**AGENCY:** Bureau of Justice Statistics, Office of Justice Programs, Justice.

**ACTION:** Notice of solicitation.

**SUMMARY:** The purpose of this notice is to announce a public solicitation to obtain a data collection agent for the 2002 Census of Publicly Funded Forensic Crime Laboratories.

**DATES:** Proposals must be received at the Bureau of Justice Statistics (BJS) on or before 5 p.m. EST, February 8, 2002 or be postmarked on or before February 8, 2002.

**ADDRESSES:** Proposals should be mailed to Application Coordinator, Bureau of Justice Statistics, 810 Seventh Street, NW, Washington, DC 20531; (202) 616–3497.

**FOR FURTHER INFORMATION CONTACT:** Greg W. Steadman, Statistician, Bureau of Justice Statistics, 810 Seventh Street, NW, Washington, DC 20531; Phone (202) 616–3284 [This is not a toll free number]; E-mail: *Greg.Steadman@usdoj.gov.*

**SUPPLEMENTARY INFORMATION:**

### Statutory Authority

The awards made pursuant to this solicitation will be funded by the Bureau of Justice Statistics consistent with the provisions of 42 U.S.C. 3732.

### Program Goals

The purpose of this award is to provide funding to administer the 2002 Census of Publicly Funded Forensic Crime Laboratories. The survey will obtain baseline information about the workload and operations of the approximately 400 forensic crime laboratories in the United States. Special emphasis will be made to identify the specific activities and resources to support forensic analysis within each laboratory including: personnel, budget, workload, and agencies for which analyses are performed and results reported. The initial draft survey instrument and roster of agencies list will be provided by BJS.

BJS anticipates making the award for a 12 month period under this solicitation. A total of up to $250,000 will be made available to complete the project pending OMB clearance and availability of FY 2002 appropriations.

### Background

The implementation of the 2002 Census of Publicly Funded Forensic Crime Laboratories is part of a continuing effort by BJS to expand statistical activities related to forensic crime laboratories. With the many recent advances in analysis and use of deoxyribonucleic acid (DNA) evidence by law enforcement agencies, attention has been focused on the improvement of DNA capabilities. The U.S. Department of Justice is now expanding crime laboratory support to all forensic disciplines beyond DNA that constitute the vast majority of physical evidence submitted for analysis in our nation's public laboratories.

Though information is available through previous surveys such as BJS' Survey of DNA Crime Laboratories, 1998 and Federal Bureau of Investigation's CODIS Survey of DNA Laboratories, that information is primarily limited to laboratories performing DNA analyses. The American Society of Crime Lab Directors (ASCLD) also collects information limited to their membership with an annual management survey. Baseline information about all publicly funded forensic crime laboratories has not been collected on a national level.

The goal of this survey is to provide baseline statistical information on the operations and workload of publicly funded forensic crime laboratories operating in the United States in order to improve the Nation's understanding of the level of work performed and resources committed to criminal forensic science analyses. The information will be useful for Federal, State and local governments to assess the areas in which additional resources for development, improvement or expansion of forensic capabilities are necessary. The information will also assist State and local laboratories in identifying technology disparities across laboratories and targeting equipment, supplies, training and technical assistance to such labs from programs such as the Crime Laboratory Improvement Program (CLIP) administered by the National Institute of Justice (NIJ).

### Eligibility Requirements

Both profit making and nonprofit organizations may apply for funds. Consistent with OJP fiscal requirements,

however, no fees may be charged against the project by profit-making organizations.

**Scope of Work**

The objective of this project is to complete data collection for the 2002 Census of Publicly Funded Forensic Crime Laboratories. This includes extensive follow up, data verification, coding and data entry, and delivery of a final dataset and documentation. The initial survey instrument and respondent list will be provided by BJS. Specifically, the recipient of funds will:

1. Develop a detailed timetable for each task in the project. Data collection should begin within three months of the project start and be completed within nine months. After the BJS project manager has agreed to the timetable, all work must be completed as scheduled.
2. Provide a final review of the survey instrument drafted by BJS for form and content.
3. Verify the names, addresses, and appropriate contact from the respondent list provided by BJS. The most current American Society of Crime Lab Directors list will comprise the respondent list for this project.
4. Conduct a pre-test of the survey instrument in a minimum of four sites to assure that survey items are perceived by respondents as intended and can be provided in a timely manner.
5. Mail surveys to respondents and provide extensive follow up to respondents that require help, clarification, or encouragement to complete the survey. This may involve multiple follow up telephone calls, re-mailing or re-faxing surveys, email correspondence, and site visits where necessary.
6. Implement and maintain an automated tracking system to provide ongoing status of each survey respondent, complete documentation, and an inventory of follow up communication and procedures for each case. This automated tracking system should be current and be accessible to the BJS project monitor at all times.
7. Identify techniques necessary to achieve a 100% survey item response rate. The data collection agent will have routine contact with the laboratories and must be knowledgeable of the various areas of forensic science analysis, laboratory organization and relations with various components of the criminal justice system.
8. Deliver to BJS electronic versions of the survey data, and documentation on diskette and in ASCII file format. Survey documentation should include, but is not limited to, a comprehensive codebook detailing variable positions, data coding, variable name and value labels, any recoding implemented during the data cleaning process, methods used for dealing with missing data, any data allocations, imputation, or non-response adjustments, and copies of all program code used to generate data or published statistics. All data and documentation from this survey will be posted on the BJS website, and data archived at the Inter-University Consortium for Political and Social Research (ICPSR).

**Award Procedures and Evaluation Criteria**

Proposals should describe the plan and implementation strategies outlined in the Scope of Work. Information on staffing levels and qualifications should be included for each task and descriptions of experience relevant to the project. Resumes of the proposed project director and key staff should be enclosed with the proposal.

Applications will be reviewed competitively with the final award decision made by the Director of BJS. The applicant will be evaluated on the basis of:

1. Demonstrated knowledge of applied survey research, including survey construction, interview techniques, data collection, data coding, entry and verification, and the production of public use data files. This includes availability of an adequate computing environment, knowledge of standard social science data processing software, and demonstrated ability to produce SPSS readable data files for analysis and report production.

2. Demonstrated ability and experience in collecting data in criminal justice departments and offices at State and local government levels.

3. Availability of subject matter expert with knowledge of the areas of forensic science analyses, forensic laboratory operational and legal issues, and logistical impediments to implementing surveys in publicly funded laboratories. Applicants must demonstrate the ability to collect data from both centralized laboratory systems, with a single office responsible for administration of multiple laboratories, and decentralized systems with administrative units within the various facilities.

4. Demonstrated fiscal, management, staff, and organizational capacity to provide sound management for this project. Applicant should include detailed staff resources and other costs by project tasks.

**Application and Award Process**

- An original and two (2) copies of the full proposal must be submitted including:
- Standard Form 424, Application for Federal Assistance
- OJP Form 7150/1, Budget Detail Worksheet
- OJP Form 4000/3, Program Narrative and Assurances
- OJP Form 4061/6, Certification regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; Drug Free Workplace requirements
- OJP Form 7120–1, Accounting System and Financial Capability Questionnaire (to be submitted by applicants who have not previously received Federal Funds from the Office of Justice Programs).

These forms can be obtained online from *www.ojp.usdoj.gov/forms.htm.*

In addition, fund recipients are required to comply with regulations designed to protect human subjects and ensure confidentiality of data. In accordance with 28 CFR Part 22, a Privacy Certificate must be submitted to BJS. Furthermore, a Screening Sheet for Protection of Human Subjects must be completed prior to the award being issued. Questions regarding Protection of Human Subjects and/or Privacy Certificate requirements can be directed to the Human Subjects Protection Officer (HSPO) at (202) 616–3282 [This is not a toll free number].

Proposals must include a project description and detailed budget. The project narrative should describe activities as discussed in the Scope of Work and address the evaluation criteria. The project narrative should contain a detailed timeline for project activities, a description of the survey methodology to be used including defined geographic boundaries, data collection method, data entry, and data documentation procedures. The detailed budget must provide detailed cost including salaries of staff involved in the project and the portion of those salaries to be paid from the award, fringe benefits paid to each staff person, travel costs, supplies required for the project, sub-contractual agreements, and other allowable costs. The grant will be made for a period of 12 months.

Dated: December 20, 2001.

**Lawrence A. Greenfeld,**

*Acting Director, Bureau of Justice Statistics.*

[FR Doc. 01–32035 Filed 12–28–01; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

December 20, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on (202) 693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer MSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

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

*Type of Review:* Extension of a currently approved collection.

*Agency:* Mine Safety and Health Administration (MSHA).

*Title:* Rock Burst Control Plan (pertains to Underground Metal/Nonmetal Mines)—30 CFR 57.3461.

*OMB Number:* 1219–0097.

*Affected Public:* Business or other for-profit.

*Frequency:* On occasion.

*Type of Response:* Reporting.

*Number of Respondents:* 2.

*Number of Annual Responses:* 2.

*Estimated Time Per Response:* 12 hours.

*Total Burden Hours:* 24.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* 30 CFR 57.3461 requires underground metal and nonmetal mine operators to develop a rock burst plan within 90 days after a rock burst has been experienced. Stress data is normally recorded on gages and plotted on maps. This information is used for work assignments to assure miner safety and to schedule correction work.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 01–32071 Filed 12–28–01; 8:45 am]

BILLING CODE 4510–43–M

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## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

December 20, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on (202) 693–4129 or E-mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

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

*Type of Review:* Revision of a currently approved collection.

*Agency:* Employment and Training Administration (ETA).

*Title:* Labor Exchange Reporting System.

*OMB Number:* 1205–0240.

*Affected Public:* State, Local, or Tribal Government and Individuals or households.

*Type of Response:* Reporting and Recordkeeping.

*Number of Respondents:* 27,054.

| Requirement | Frequency | Annual responses | Average time per response (hours) | Estimated burden hours |
|---|---|---|---|---|
| Forms: | | | | |
| ETA 9002A | Quarterly | 216 | 1 | 216 |
| ETA 9002B | Quarterly | 216 | 1 | 216 |
| ETA 9002C | Quarterly | 216 | 3 | 648 |
| ETA 9002D | Quarterly | 216 | 3 | 648 |
| ETA 9002E | Quarterly | 216 | .75 | 162 |
| VETS 200A | Quarterly | 212 | 1 | 212 |
| VETS 200B | Quarterly | 212 | 1 | 212 |
| VETS 200C | Quarterly | 212 | 1 | 212 |
| Customer Satisfaction Survey: | | | | |
| State Agency Survey Administration | On-going | 54 | 340 | 18,360 |
| State Survey Overhead | On-going | 54 | 77 | 4,158 |

| Requirement | Frequency | Annual responses | Average time per response (hours) | Estimated burden hours |
|---|---|---|---|---|
| Customer Satisfaction Survey | On occasion (once per contact). | 27,000 | .083 | 2,250 |
| Total: | | 28,824 | | 27,294 |

*Total Annualized Capital/Startup Costs:* $819,000.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $10,000,000.

*Description:* The ET Handbook No. 406 (ETA 9002 Data Preparation Handbook) provides instructions for completing the ETA 9002 Reports. The ETA 9002 Reports collect information on the activities administered by the public labor exchange in each State and on the outcomes attributable to these activities. The VETS 200 Report and Specifications collect information on the labor exchange activities provided to veterans by Disabled Veterans' Outreach Program (DVOP) specialists and Local Veterans' Employment Representatives (LVER's) within the public labor exchange in each State. We are revising the ET Handbook No. 406 (ETA 9002 Data Preparation Handbook) and VETS 200 Report and Specifications to reflect current federal reporting requirements and to provide for the reporting of performance outcome information derived using the labor exchange performance measures.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 01–32072 Filed 12–28–01; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

December 20, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on (202) 693–4129 or E-Mail: *King_Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Veterans' Employment and Training Service (VETS).

*Title:* Eligibility Data Form: Uniformed Services Employment and Reemployment Rights Act and Veteran's Preference.

*OMB Number:* 1293–0002.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Number of Respondents:* 1,500.

*Number of Annual Responses:* 1,500.

*Estimated Time Per Response:* 15 minutes.

*Total Burden Hours:* 375.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (Operating/maintaining systems or purchasing services):* $0.

*Description:* The Form VETS/USERRA/VP–1010 is used to file complaints with the Department of Labor's Veterans' Employment and Training Service under either the Uniformed Services Employment and Reemployment Rights Act or laws and regulations related to veteran's preference in Federal employment.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 01–32073 Filed 12–28–01; 8:45 am]

BILLING CODE 4510–79–M

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

**1. Elk Run Coal Company, Inc.**

[Docket No. M–2001–109–C]

Elk Run Coal Company, Inc., P.O. Box 497, Sylvester, West Virginia 25193 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Black King I North Portal Mine (I.D. No. 46–08553) located in Boone County, West Virginia. The petitioner proposes to establish weekly evaluations at three monitoring stations using hand-held gas detection devices and anemometers. The petitioner states that these monitoring stations will be immediately outby survey station 2915 and designated S–1, at the punch-out designated as S–2, and at the punch-out designated S–3; that the evaluations points will be evaluated weekly by a certified person and the results of the examination will be recorded in the examination books. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**2. Apollo Coal Company**

[Docket No. M–2001–110–C]

Apollo Coal Company, P.O. Box 503, Staffordsville, Kentucky 41256 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (plug and receptacle-type connectors) to its Mine #3 (I.D. No. 15–18075) located in Knott County, Kentucky. The petitioner proposes to use permanently installed, spring-

loaded locking device on mobile battery-powered machines instead of using padlocks to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**3. Straight Fork Mining, Inc.**

[Docket No. M–2001–111–C]

Straight Fork Mining, Inc., P.O. Box 249, Stanville, Kentucky 41659 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (plug and receptacle-type connectors) to its No. 3 Mine (I.D. No. 15–18441) located in Knott County, Kentucky. The petitioner proposes to use permanently installed, spring-loaded locking device on mobile battery-powered machines instead of using padlocks to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**4. Clas Coal Company, Inc.**

[Docket No. M–2001–112–C]

Clas Coal Company, Inc., P.O. Box 35, Deane, Kentucky 41812 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (plug and receptacle-type connectors) to its E–3 Mine (I.D. No. 15–18392) located in Knott County, Kentucky. The petitioner proposes to use permanently installed, spring-loaded locking device on mobile battery-powered machines instead of using padlocks to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**5. Centralia Mining**

[Docket No. M–2001–113–C]

Centralia Mining, RD #2 Box 665, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 49.2(b) (mine rescue teams) to its Skidmore Slope (I.D. No. 36–09001) located in Columbia County, Pennsylvania. The petitioner requests a modification of the standard to permit the reduction of two mine rescue teams with five members and one alternate each, to two mine rescue teams of three members with one alternate for either team. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**6. Centralia Mining**

[Docket No. M–2001–114–C]

Centralia Mining, RD #2 Box 665, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1100–2(a) (quantity and location of firefighting equipment) to its Skidmore Slope (I.D. No. 36–09001) located in Columbia County, Pennsylvania. The petitioner requests a modification of the standard to permit use of portable fire extinguishers only to replace existing requirements where rock dust, water cars, and other water storage equipped with three, ten quart pails is not practical. The petitioner proposes to use two (2) fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face for equivalent fire protection for the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**7. Centralia Mining**

[Docket No. M–2001–115–C]

Centralia Mining, RD #2 Box 665, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine maps) to its Skidmore Slope (I.D. No. 36–09001) located in Columbia County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope; and to limit the required mapping of the mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the map illegible. The petitioner further asserts that use of cross-sections in lieu of contour lines has been practiced since the late 1800's thereby providing critical information relative to the spacing between veins and proximity to other mine workings which fluctuate considerably. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**8. Centralia Mining**

[Docket No. M–2001–116–C]

Centralia Mining, RD #2 Box 665, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 1202 and 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Skidmore Slope (I.D. No. 36–09001) located in Columbia County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months as required, and to update maps daily by hand notations. The petitioner also proposes to conduct surveys prior to commencing retreat mining and whenever either a drilling program under 30 CFR 75.388 or plan for mining into inaccessible areas under 30 CFR 75.389 is required. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**9. Centralia Mining**

[Docket No. M–2001–117–C]

Centralia Mining, RD #2 Box 665, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Skidmore Slope (I.D. No. 36–09001) located in Columbia County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead use increased rope strength and secondary safety rope connection in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**10. Blue Diamond Coal Company**

[Docket No. M–2001–118–C]

Blue Diamond Coal Company, P.O. Box 47, Slemp, Kentucky 41763–0047 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Mine #77 (I.D. No. 15–09636) located in Perry County, Kentucky. The petitioner

proposes to use air coursed through conveyor belt entries to ventilate working places. The petitioner proposes to install and maintain a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**11. BSE Mining, Inc.**

[Docket No. M–2001–119–C]

BSE Mining, Inc., P.O. Box 267, Hager Hill, Kentucky 41222 has filed a petition to modify the application of 30 CFR 75.800 (high-voltage circuits; circuit breakers) to its No. 1 Mine (I.D. No. 15–18343) located in Morgan County, Kentucky. The petitioner proposes to use a contactor on high-voltage systems instead of using circuit breakers. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**12. White County Coal, LLC**

[Docket No. M–2001–120–C]

White County Coal, LLC, 1343 County Road 1450E, Carmi, Illinois 62821 has filed a petition to modify the application of 30 CFR 75.901 (protection of low- and medium-voltage three-phase circuits used underground) to its Pattiki II Mine (I.D. No. 11–03058) located in White County, Illinois. The petitioner proposes to use a 200KW, 480-volt, diesel powered generator set with an approved diesel drive engine to power electrical equipment that will only move equipment in, out, and around the mine and to perform work in areas outby section loading points where equipment is not required to be maintained as permissible. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**13. New South Resources, d.b.a. Black Hawk Mining**

[Docket No. M–2001–121–C]

New South Resources, d.b.a. Black Hawk Mining, P.O. Box 2594, Beckley, West Virginia 25802–2594 has filed a petition to modify the application of 30 CFR 75.1102 (slippage and sequence switches) to its Mine No. 1 (I.D. No. 46–08809) located in Raleigh County, West Virginia. The petitioner proposes to install and maintain an electrical switch that stops the belt when the coal in the bin reaches a predetermined level near the top of the bin. The petitioner states that activation of the electrical switch by the rising coal level will prevent coal from overflowing the bins and spilling or being carried back on the conveyor belt; and that the No. 2 Belt will stop until the bin begins to empty and the coal level drops below the predetermined level previously mentioned and the feeders which feed coal from the bins onto the No. 1 Belt are sequenced so that the feeders are stopped automatically whenever the No. 1 Belt stops operating. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**Request for Comments**

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov,* or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 21st day of December, 2001.

**David L. Meyer,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 01–32036 Filed 12–28–01; 8:45 am]

BILLING CODE 4510–43–P

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

**SUMMARY:** The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants.''

2. *Current OMB approval number:* 3150–0155.

3. *How often the collection is required:* One-time submission with application for renewal of an operating license for a nuclear power plant and occasional collections for holders of renewed licenses.

4. *Who is required or asked to report:* Commercial nuclear power plant licensees who wish to renew their operating licenses.

5. *The number of annual respondents:* 6 respondents annually based on an estimate of the receipt of 19 new renewal applications over three years.

6. *The number of hours needed annually to complete the requirement or request:* Approximately 432,333 hours (405,333 hours one-time reporting burden and 27,000 hours recordkeeping burden).

7. *Abstract:* 10 CFR Part 54 of the NRC regulations, ''Requirements for Renewal of Operating Licensees for Nuclear Power Plants,'' specifies the procedures, criteria, and standards governing nuclear power plant license renewal, including information submittal and recordkeeping requirements, so that the NRC may make determinations that extension of the license term will continue to ensure the health and safety of the public.

Submit, by March 1, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/NRC/PUBLIC/OMB/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by

Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 20th day of December 2001.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01–32060 Filed 12–28–01; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

**SUMMARY:** The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 536, ''Operator Licensing Examination Data''.
2. *Current OMB approval number:* 3150–0131.
3. *How often the collection is required:* Annually.
4. *Who is required or asked to report:* All holders of operating licenses or construction permits for nuclear power reactors.
5. *The number of annual respondents:* 80.
6. *The number of hours needed annually to complete the requirement or request:* 80.
7. *Abstract:* NRC is requesting renewal of its clearance to annually request all commercial power reactor licensees and applicants for an operating license to voluntarily send to the NRC: (1) Their projected number of candidates for operator licensing initial examinations; (2) the estimated dates of the examinations; (3) information on whether the examination will be facility developed or NRC developed; and (4) the estimated number of individuals that will participate in the Generic Fundamentals Examination (GFE) for that calendar year. Except for the GFE, this information is used to plan budgets and resources in regard to operator examination scheduling in order to meet the needs of the nuclear industry.

Submit, by March 1, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: http://www.nrc.gov/NRC/PUBLIC/OMB/index.html. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 21st day of December 2001.

For the Nuclear Regulatory Commission.

**Beth St. Mary,**

*Acting NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01–32064 Filed 12–28–01; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 030–35994, License No. 37–30603–01,EA–01–313]**

### In the Matter of Advanced Medical Imaging and Nuclear Services Easton, PA 18045; Order Suspending License (Effective Immediately)

**I**

Advanced Medical Imaging and Nuclear Services (Licensee) is the holder of Byproduct Nuclear Material License No. 37–30603–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 35. License No. 37–30603–01 authorizes possession and use of certain byproduct material identified in 10 CFR 35.100 and 35.200 for any uptake, dilution, excretion, imaging and localization procedures approved in those parts. The license was issued on February 16, 2001, and is due to expire on February 28, 2011.

**II**

On November 30, 2001, the NRC commenced an inspection at the Licensee's facility in Easton, Pennsylvania. Based on the findings of the inspection to date, the NRC identified violations of requirements. The violations identified during the inspection involved the possession and use of radioactive materials (including the diagnostic administration to patients) from June 2001 to November 2001, even though the licensee did not have an authorized user (AU) and/or a Radiation Safety Officer (RSO) as required by the regulations and the license. The individual named on the license as the RSO and AU between February 16, 2001, and December 10, 2001, had neither been hired by the licensee's organization nor had ever acted as the RSO or AU for the licensee.

After these violations were identified, the NRC issued a Confirmatory Action Letter to the licensee on December 3, 2001, which in part, confirmed the Licensee's commitment to immediately place all byproduct material in its possession in secured storage, and cease all licensed activities until the Licensee retained an AU and RSO, and received approval from the NRC for the changes requiring a license amendment to bring the licensee's program into full compliance with 10 CFR Part 35. The licensee submitted an amendment request, and on December 11, 2001, NRC issued an amendment to the license, to reflect the new AU and RSO. The Licensee subsequently conducted activities without the supervision of the AU as required by 10 CFR 35.25. Specifically, shortly after the license amendment was issued, byproduct materials were ordered during the evening hours of December 11, 2001, and subsequently were received, possessed, and used for administration to patients on December 12, 2001, by an individual who had not received the required instructions from, and who was not under the supervision of, an AU. The individual was not provided instructions from the AU in the principles of radiation appropriate to the individual's use of byproduct materials, including, but not limited to, appropriate use of dosimetry, doses to be administered to patients, and procedures for radiation safety as required by 10 CFR 35.25. This constitutes an additional violation.

These violations are particularly significant because (1) The individual

originally listed on the license as the AU/RSO was never employed by Advanced Medical Imaging and Nuclear Services, (2) a Licensee consultant informed the Licensee, as a result of an audit he conducted in October 2001, that certain documents (such as linearity tests, leak tests, quarterly inventory, survey results, and the prescribed dose schedule), had not been signed by the RSO listed on the license, as required, and (3) even after the Licensee had committed to the NRC to make the changes necessary to bring its program into full compliance, as documented in the referenced Confirmatory Action Letter, the Licensee continued to conduct activities without the required supervision by an AU.

**III**

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements. It is important that licensed material be used by, or under the supervision of, an AU, and that radiation safety aspects of the Licensee's program are being performed in accordance with approved procedures and regulatory requirements, as verified by a RSO. In this regard, it appears that the Licensee has repeatedly failed to comply with NRC requirements, as indicated herein. These actions by the Licensee have raised serious doubt as to whether the Licensee can be relied upon in the future to comply with NRC requirements.

Consequently, given these findings, as well as the fact that NRC was notified on or about December 13, 2001, by the Licensee's Vice-President that the AU currently listed on the license is no longer the AU, I lack the requisite reasonable assurance that the Licensee's current operations can be conducted under License No. 37–30603–01 in compliance with the Commission's requirements, and that the health and safety of the public, including the Licensee's employees, will be protected. Therefore, the health, safety and interest of the public require that License No. 37–30603–01 be suspended. Furthermore, pursuant to 10 CFR 2.202, I find that, given the safety significance of conducting licensed activities without an AU/RSO, and the conduct of such activities without the supervision of the AU designated in the amended license, the public health, safety, and interest require that this Order be immediately effective.

**IV**

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 30 and 35, IT IS HEREBY ORDERED, *EFFECTIVE IMMEDIATELY*, THAT LICENSE No. 37–30603–01 IS SUSPENDED AS FOLLOWS, pending further Order.

A. All NRC-licensed material in the Licensee's possession shall be placed in secured storage.

B. All activities under License No. 37–30603–01 to use licensed material shall be suspended. All other requirements of the license remain in effect.

C. No material authorized by the license shall be ordered, purchased, received, or transferred by the Licensee while this Order is in effect.

D. All records related to licensed activities shall be maintained in their original form and must not be removed or altered in any way.

The Director of the Office of Enforcement, the Director of the Office of Nuclear Materials Safety and Safeguards, or the Regional Administrator, Region I, may, in writing, relax or rescind this order upon demonstration by the Licensee of good cause.

**V**

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for an extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this order and set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued.

Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Services Section, Washington, DC 20555. Copies of the hearing request also should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, and to the Licensee if the hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which the individual's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or a written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

After reviewing your response, the NRC will determine whether further action is necessary to ensure compliance with regulatory requirements.

Dated this 14th day of December, 2001.

For the Nuclear Regulatory Commission.

**Carl J. Paperiello,**

*Deputy Executive Director for Materials, Research and State Programs.*

[FR Doc. 01–32063 Filed 12–28–01; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–416]**

## Entergy Operations, Inc., (Grand Gulf Nuclear Power Station, Unit 1); Exemption

**I**

Entergy Operations, Inc. (EOI or the licensee) is the holder of Facility Operating License No. NPF–29, which authorizes operation of the Grand Gulf Nuclear Station, Unit 1 (GGNS) at power levels not to exceed 3833 megawatts thermal.

The facility consists of one boiling-water reactor located at the licensee's site in Claiborne County, Mississippi. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

**II**

Section IV.F.2.b of Appendix E to Title 10 of the Code of Federal Regulations (10 CFR) part 50, requires that each licensee at each site conduct an exercise of its onsite emergency plan every 2 years, and indicates the exercise may be included in the full-participation biennial exercise required by paragraph 2.c.

In summary, licensees are to take actions necessary to ensure that adequate emergency response capabilities are maintained during the interval between biennial exercises by conducting drills. Appendix E, section IV.F.2.c. to 10 CFR part 50 requires offsite plans for each site to be exercised biennially with full participation by each offsite authority having a role under the plan. During such biennial full-participation exercises, the NRC evaluates onsite emergency preparedness activities, and the Federal Emergency Management Agency evaluates offsite emergency preparedness activities. The licensee successfully conducted a full-participation exercise for GGNS on June 23, 1999. By letter dated September 18, 2001, as supplemented by letter dated December 3, 2001, the licensee requested an exemption from 10 CFR part 50, Appendix E, section IV.F.2.c., regarding the conduct of a full-participation exercise originally scheduled for the week of September 17, 2001. Specifically, the licensee proposed rescheduling the exercise originally scheduled for the week of September 17, 2001, to the week of March 4, 2002. While the licensee requested an exemption from the requirements of 10 CFR part 50, Appendix E, section IV.F.2.c., to exercise their offsite emergency plan, the NRC staff has determined that an exemption from the requirements in 10 CFR part 50, Appendix E, section IV.F.2.b., to exercise their onsite emergency plan simultaneously with the offsite emergency plan exercise, was also necessary.

The Commission, pursuant to 10 CFR 50.12(a)(1), may grant exemptions from the requirements of 10 CFR part 50 that are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security. The Commission, however, pursuant to 10 CFR 50.12(a)(2), will not consider granting an exemption unless special circumstances are present. Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

**III**

The licensee requests a one-time change in the schedule for the next full-participation exercise for GGNS. Subsequent full-participation exercises for GGNS would be scheduled at no greater than 2-year intervals in accordance with 10 CFR part 50, Appendix E, section IV.F.2.c. Accordingly, the exemption would provide only temporary relief from that regulation, in that the licensee has committed to conduct the exercise during the next calendar year (2002), and has not requested any permanent changes in future exercise scheduling. As a result, subsequent to the re-scheduled full-participation exercise to be conducted in 2002, the licensee is expected to conduct another full-participation exercise of onsite and offsite emergency plans in 2003.

As indicated in the licensee's request for an exemption, as supplemented, the licensee had originally scheduled a full-participation exercise for the week of September 17, 2001. As further set forth in the request, however, due to the national emergency of September 11, 2001, heightened security at GGNS resulted in increased monitoring of people and equipment, and additional controls on maintenance activities. Conducting an emergency preparedness exercise during that period of heightened security would have increased the security risk, because exercise activities may have presented an unwarranted distraction of nuclear security officers as well as local law enforcement officials. Conducting the full participation exercise at that time could also have created undue public alarm with the potential to create a public safety concern. These circumstances resulting in the licensee's request for exemption were beyond the licensee's control. Accordingly, the licensee made a good faith effort to comply with the schedule requirements of 10 CFR part 50, Appendix E, for full-participation emergency plan exercises.

The staff examined the licensee's rationale to support the exemption request, and concluded that granting the exemption would meet the underlying purpose of 10 CFR part 50, because the exemption would provide only temporary relief from the applicable regulation and the licensee made a good faith effort to comply with the regulation. Furthermore, the exemption would result in benefit to the public health and safety. The national emergency of September 11, 2001, and the subsequent recovery and security responses required that licensee, State, and local resources, expected to be available for the previously scheduled biennial exercise, be applied to agency missions. Offsite agencies were not able to dedicate the appropriate level of resources, as it would have detracted from their response to the security needs at that time. Postponement of the exercise resulted in a benefit to public health and safety that compensated for any decrease in public health and safety that may have resulted from delaying the exercise. Additionally, since the June 23, 1999, full-participation exercise, the licensee has maintained emergency preparedness by conducting ten emergency preparedness drills, each requiring the full activation of all GGNS emergency facilities, which is a compensating measure contributing to justification of the exemption. The exemption only provides temporary relief from the applicable regulation, in that the licensee has committed to conduct the exercise during the next calendar year (2002), and has not requested any permanent changes in future exercise scheduling.

Based upon consideration of the public health and safety, schedule, and resource issues resulting from the national emergency of September 11, 2001, the staff concludes that the request for exemption is acceptable. However, in this period of continued heightened security concerns regarding nuclear plant vulnerability it is prudent to conduct the exercise as soon as practical to demonstrate and maintain readiness.

The safety evaluation 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. Publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room).

**IV**

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present pursuant to 10 CFR 50.12(a)(2)(v), in that the exemption would provide only temporary relief from the applicable regulations, and the licensee has made good faith efforts to comply with the regulations. Therefore, the Commission hereby grants EOI, specifically for GGNS, a one-time scheduler exemption from the requirements to conduct an exercise of its onsite and offsite emergency plans every 2 years with full-participation by each offsite authority having a role under the plan as required by 10 CFR part 50, Appendix E, sections IV.F.2.b. and c. To allow flexibility, should it be necessary, the exemption is granted to permit conduct of the full-participation exercise before the end of the third quarter of 2002, with the understanding that it should be conducted as close as practical to the licensee's proposed date of the week of March 4, 2002.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (66 FR 64480).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 20th day of December, 2001.

For the Nuclear Regulatory Commission.

**Ledyard B. Marsh,**

*Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 01–32058 Filed 12–28–01; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**Docket No. 71–0122, Approval No. 0122,EA–01–164]**

## In the Matter of J.L. Shepherd & Associates San Fernando, CA; Confirmatory Order Relaxing Order (Effective Immediately)

**I**

J. L. Shepherd & Associates (JLS&A or Approval Holder) was the holder of Quality Assurance (QA) Program Approval for Radioactive Material Packages No. 0122 (Approval No. 0122), issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 71, subpart H. The approval was previously issued pursuant to the QA requirements of 10 CFR section 71.101. QA activities authorized by Approval No. 0122 include: design, procurement, fabrication, assembly, testing, modification, maintenance, repair, and use of transportation packages subject to the provisions of 10 CFR part 71. Approval No. 0122 was originally issued January 17, 1980. Revision No. 6 was issued December 6, 2001, with an expiration date on November 30, 2006. In addition to having a QA program approved by the NRC to satisfy the provisions of 10 CFR part 71, subpart H, to transport or deliver for transport licensed material in a package, JLS&A is required by 10 CFR part 71, subpart C, to have and comply with the package's Certificate of Compliance (CoC) issued by the NRC. Based on the JLS&A failure to comply with 10 CFR part 71, QA Program Approval No. 0122 was withdrawn by an immediately effective NRC Order, dated July 3, 2001.

**II**

By letter dated August 17, 2001, JLS&A responded to the U. S. Nuclear Regulatory Commission's July 2001 Order. In a August 16, 2001, response, appended to the August 17, 2001, letter, JLS&A requested that provisions of the Order be relaxed based on a showing of good cause. Specifically, JLS&A requested interim relief from the July 2001 Order based on JLS&A's proposed Near-Term Corrective Action Plan (NTCAP), to allow 68 shipments to 16 customers, in Department of Transportation specification packaging designated as 20WC. The NRC staff reviewed JLS&A's relief request to determine, among other things, whether the requested relief would be consistent with assurances that public health and safety are maintained. As a result the NRC issued a Confirmatory Order Relaxing Order dated September 19, 2001, which relaxed the July 3, 2001, Order to grant interim relief to allow 68 shipments to 16 customers in 20WC packages in accordance with JLS&A's NTCAP, through March 2002, provided certain commitments were completed.

A condition of the September 19, 2001,Order was that JLS&A hold all shipments until NRC has completed an inspection which confirms JLS&A's satisfactory completion of the identified commitments. Subsequent to certifications under oath and affirmation from both J. L. Shepherd and the independent auditor that the conditions of the Confirmatory Order have been completed, the NRC conducted an inspection at the JLS&A facility on November 13–15, 2001. As a result of the inspection findings, the inspection team authorized JLS&A to commence the shipments in accordance with the Confirmatory Order. By letter dated November 20, 2001, NRC staff provided a written confirmation of the inspection teams authorization.

**III**

By letters dated December 7 and 11, 2001, JLS&A again requested that provisions of the July 3, 2001, Order be relaxed based on a showing of good cause. Specifically, JLS&A requested interim relief to ship an irradiator to Surry Nuclear Power Station and return the replaced unit to JLS&A's facility in California. JLS&A's proposed to use the NTCAP specified in the September 19, 2001, Confirmatory Order to allow these two shipments in the Department of Transportation specification packaging designated as 20WC. These shipments are necessary for Surry Power Station to continue to provide adequate quality control on instrumentation used for all required radiation surveys in support of plant operations. Therefore, the two shipments are in the best interest of public health and safety.

With respect to the substantive concerns identified by the staff in the July 2001 Order, on December 7 and 11, 2001, JLS&A agreed to take the following corrective actions listed below, before it makes any of the proposed shipments to or from Surry Power Station in accordance with the NTCAP:

1. a. JLS&A will use the implementing procedures for the 1995 QA program plan, as revised, and the NTCAP to complete an inspection of the 20WC packages involved in the Surry shipment. The inspection will confirm that the packages are in conformance with 49 CFR 178.362, ''Specification 20WC Wooden Protective Jacket.'' Each inspection will include, at a minimum,

actual physical measurements, and visual inspections for damage, corrosion, or other potentially unacceptable conditions;

b. JLS&A will document the results of each inspection in separate reports approved by the QA Administrator and prepared in accordance with the revised QA Program Plan and implementing procedures. The report will include the list of attributes verified, the acceptance criteria, and the results for each attribute;

2. JLS&A will use only JLS&A's staff, contractors, and sub-contractors, trained in the NTCAP, the revised QAPP and implementing procedures for conducting the inspections listed in the above condition; and,

3. JLS&A will not make the initial shipment without certification by the independent auditor that the two conditions listed above have been completed. JLS&A will provide NRC with this certification prior to any shipment.

By its letter of December 11, 2001, JLS&A consented to issuance of this Confirmatory Order granting interim relief from the July 2001 Order subject to the commitments, (as described in Section IV below), agreed that this Confirmatory Order is to be effective upon issuance, and agreed to waive its right to a hearing on this action. Implementation of these commitments will provide assurance that sufficient resources will be applied to the QA program, and that the program will be conducted safely and in accordance with NRC requirements.

I find that JLS&A's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that JLS&A's commitments be confirmed by this Confirmatory Order. Based on the above and JLS&A's consent, this Confirmatory Order is effective immediately upon issuance.

**IV**

Accordingly, pursuant to Sections 62, 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Section 2.202 and 10 CFR Parts 71, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT THE JULY 3, 2001, ORDER IS RELAXED TO GRANT INTERIM RELIEF TO ALLOW A SHIPMENT TO, AND A SHIPMENT FROM, SURRY POWER STATION IN 20 WC PACKAGES IN ACCORDANCE WITH JLS&A'S NTCAP, AS REQUESTED BY LETTERS DATED DECEMBER 7 and 11, 2001, PROVIDED:

1. a. JLS&A will use the implementing procedures for the 1995 QA program plan, as revised, and the NTCAP to complete an inspection of the 20WC packages involved in the Surry shipment. The inspection will confirm that the packages are in conformance with 49 CFR 178.362, ''Specification 20WC Wooden Protective Jacket.'' Each inspection will include, at a minimum, actual physical measurements, and visual inspections for damage, corrosion, or other potentially unacceptable conditions;

b. JLS&A will document the results of each inspection in separate reports approved by the QA Administrator and prepared in accordance with the revised QAPP and implementing procedures. The report will include the list of attributes verified, the acceptance criteria, and the results for each attribute;

2. JLS&A will use only JLS&A's staff, contractors, and sub-contractors, trained in the NTCAP, the revised QAPP and implementing procedures for conducting the inspections listed in the above condition; and,

3. JLS&A will not make the initial shipment without certification by the independent auditor that the two conditions listed above have been completed. JLS&A will provide NRC with this certification prior to any shipment.

The Director, Office of Enforcement or Office of Nuclear Material Safety and Safeguards, may in writing, relax or rescind this Confirmatory Order upon demonstration of good cause by the Approval Holder.

**V**

In accordance with 10 CFR section 2.202, any person, other than JLS&A, adversely affected by this Confirmatory Order may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies of the hearing request also should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Director, Office of Nuclear Material Safety and Safeguards at the same address, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011, and to the Approval Holder. If such person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR section 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in section IV above shall be final 20 days from the date of this Confirmatory Order without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in section IV shall be final when the extension expires if a hearing request has not been received. A request for hearing shall not stay the immediate effectiveness of this confirmatory order.

Dated this 13th day of December, 2001.

For the Nuclear Regulatory Commission.

**Frank J. Congel,**

*Director, Office of Enforcement.*

[FR Doc. 01–32062 Filed 12–28–01; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–498 and 50–499; License Nos. NPF–76 and NPF–80]**

## South Texas Project Nuclear Operating Company et al., (South Texas Project Electric Generating Station, Unit Nos. 1 and 2); Order Approving Transfer of Licenses and Conforming Amendments

**I**

Reliant Energy Incorporated (Reliant),[1] the City Public Service Board of San Antonio (CPS), Central Power and Light Company (CPL), and the City of Austin, Texas (COA) are the licensed owners, and South Texas Project Nuclear Operating Company (STPNOC)

[1] Reliant was formerly known as Houston Lighting & Power Company (HL&P). HL&P changed its name to Reliant Energy Incorporated in 1999.

is the exclusive licensed operator, of South Texas Project Electric Generating Station, Units 1 and 2 (STPEGS), and in regard thereto, hold Facility Operating License Nos. NPF–76 and NPF–80. STPEGS (the facility) is located in Matagorda County, Texas.

**II**

By application dated May 31, 2001, as supplemented by letters dated June 14, August 13, October 16, and November 7, 2001 (collectively the application), STPNOC, on behalf of Reliant, requested the consent of the U.S. Nuclear Regulatory Commission (NRC or Commission) to a proposed indirect transfer of control of the 30.8 percent undivided ownership interest of Reliant in STPEGS under Facility Operating License Nos. NPF–76 and NPF–80, to CenterPoint Energy, Inc., a newly-formed company that will be the new parent holding company of Reliant, and, to the extent an indirect transfer would result, Reliant's 30.8 percent interest in STPNOC, the licensed operator of STPEGS under the licenses, to CenterPoint Energy, Inc. The application also requested the consent of the Commission to a proposed direct transfer of Reliant's 30.8 percent ownership interest in STPEGS to Texas Genco LP, which will be indirectly wholly-owned by CenterPoint Energy, Inc., and to the indirect transfer of Reliant's 30.8 percent interest in STPNOC to Texas Genco LP, to the extent that the transfer of Reliant's ownership interest in STPNOC will result in an indirect transfer of the STPNOC licenses. According to the application, the proposed direct transfer may occur contemporaneously with CenterPoint Energy, Inc. becoming the parent holding company of Reliant or some time thereafter. The application further requested the approval of conforming license amendments to reflect the direct transfer of the licenses.

The proposed conforming license amendments would replace references to HL&P in the licenses with references to Texas Genco LP, as appropriate, and make other administrative changes to reflect the proposed direct transfer.

The application requested approval of the direct transfer of the facility operating licenses, conforming license amendments, and indirect license transfers pursuant to 10 CFR 50.80 and 10 CFR 50.90. The staff published a notice of the request for approval and an opportunity for a hearing in the **Federal Register** on September 28, 2001 (66 FR 49711). The October 16 and November 7, 2001, supplemental information did not expand the scope of the application as originally noticed in the **Federal Register**. The Commission received no comments or requests for hearing pursuant to the notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application, and relying upon the representations and agreements contained in the application, the NRC staff has determined that the proposed corporate restructuring resulting in CenterPoint Energy Inc. becoming the parent holding company of Reliant will not affect the qualifications of Reliant to hold a 30.80 percent ownership interest in the facility operating licenses for STPEGS or have any effect on the qualifications of STPNOC to the extent held by Reliant, and that the indirect transfer of the licenses for STPEGS and of STPNOC's licenses to the extent effected by the proposed corporate restructuring, is otherwise consistent with applicable provisions of law, regulations, and Orders issued by the Commission, subject to the applicable conditions set forth herein. The NRC staff has also determined that Texas Genco LP is qualified to be a holder of the facility operating licenses for STPEGS, and to the extent that the transfer of Reliant's interest in STPNOC to Texas Genco LP results in an indirect transfer of the STPNOC license, the transfer will not affect the qualifications of STPNOC to be the licensed operator, and that the transfer of the licenses is otherwise consistent with applicable provisions of law, regulations, and Orders issued by the Commission, subject to the conditions set forth herein. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facilities will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by a safety evaluation dated December 20, 2001.

**III**

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, it is hereby ordered that the indirect transfer of the licenses as described herein to CenterPoint Energy, Inc., and the direct transfer of the licenses as described herein to Texas Genco LP are approved, subject to the following conditions:

(1) Texas Genco LP shall, prior to the completion of the direct transfer, provide to the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Texas Genco LP has obtained the appropriate amount of insurance required of licensees under 10 CFR part 140 of the Commission's regulations.

(2) Reliant shall continue to provide decommissioning funding assurance, to be held in decommissioning trusts for STPEGS, from the date of the indirect transfer until the date of any direct transfer to Texas Genco LP. Texas Genco LP shall provide decommissioning funding assurance, to be held in decommissioning trusts for STPEGS upon the direct transfer of the STPEGS licenses to Texas Genco LP, in an amount equal to or greater than the balance in the STPEGS decommissioning trusts immediately prior to the transfer. In addition, Texas Genco LP shall ensure that all contractual arrangements referred to in the application to obtain necessary decommissioning funds for STPEGS through a non-bypassable charge are executed and will be maintained until the decommissioning trusts are fully funded, or shall ensure that other mechanisms that provide equivalent assurance of decommissioning funding in accordance with the Commission's regulations are maintained.

(3) The master decommissioning trust agreement for STPEGS, at the time the direct transfers are effected and thereafter, is subject to the following:

a. The decommissioning trust agreement must be in a form acceptable to the NRC.

b. With respect to the decommissioning trust funds, investments in the securities or other obligations of CenterPoint Energy, Inc., or its affiliates, successors, or assigns, shall be prohibited. Except for

investments in funds tied to market indices or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

c. The decommissioning trust agreement must provide that the trustee, investment advisor, or anyone else directing the investments made in the trusts shall adhere to the standards for such investments established by the Public Utility Commission of Texas (e.g., 16 Texas Administration Code § 25.301).

d. The decommissioning trust agreement must provide that except for ordinary administrative expenses, no disbursements or payments from the trusts shall be made by the trustee unless the trustee has first given the NRC 30 days prior written notice of such disbursement or payment. The decommissioning trust agreement shall further contain a provision that no disbursements or payments from the trusts shall be made if the trustee receives prior written notice of an objection from the Director, Office of Nuclear Reactor Regulation.

e. The decommissioning trust agreement must provide that the agreement cannot be modified in any material respect without 30 days prior written notification to the Director, Office of Nuclear Reactor Regulation.

(4) Reliant and Texas Genco LP shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the application, the requirements of this Order, and the related safety evaluation.

(5) Texas Genco LP shall provide the Director, Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from CenterPoint Energy, Inc., or its subsidiaries, to a proposed direct or indirect parent, or to any other affiliated company, facilities for the production of electric energy having a depreciated book value exceeding ten percent (10%) of such licensee's consolidated net utility plant, as recorded on Texas Genco LP's book of accounts.

(6) Texas Genco LP shall inform the Director of the Office of Nuclear Reactor Regulation of the date of the closing of the direct transfer no later than two business days prior to such date. If the direct and indirect transfers of the licenses approved by this Order are not completed by December 31, 2002, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

*It is further ordered* that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject direct license transfers are approved. The amendments shall be issued and made effective at the time the proposed direct license transfers are completed. It is hereby noted that the staff is also considering approving a transfer of the licenses to the extent held by CPL. Should the transfer of the licenses to the extent held by CPL take place prior to issuance of the amendments in the current case, the amendments approved here should reflect any conforming amendments approved and issued in connection with the CPL transfer.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated May 31, 2001, the supplemental submittals dated June 14, August 13, October 16, and November 7, 2001, and the safety evaluation dated December 20, 2001, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov.*

Dated at Rockville, Maryland this 20th day of December, 2001.

For the Nuclear Regulatory Commission.

**Brian W. Sheron,**

*Acting Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 01–32059 Filed 12–28–01; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–361 and 50–362]**

## In the Matter of Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3); Exemption

### I

Southern California Edison Company (the licensee) is the holder of Facility Operating License Nos. NPF–10 and NPF–15, which authorize operation of the San Onofre Nuclear Generating Station, Units 2 and 3, (SONGS) at power levels not to exceed 3438 megawatts thermal. The facility consists of two pressurized-water reactors located at the licensee's site in San Diego County, California. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

### II

Section IV.F.2.b of Appendix E to Title 10 of the Code of Federal Regulations (10 CFR) part 50 requires each licensee at each site to conduct an exercise of its onsite emergency preparedness plan (EPP) every 2 years and indicates the exercise may be included in the full participation biennial exercise of the offsite EPP required by paragraph 2.c. Paragraph 2.c requires the offsite EPP for each site to be exercised biennially with full participation by each offsite authority having a role under the plan. During such biennial full participation exercises, the NRC evaluates onsite emergency preparedness activities and the Federal Emergency Management Agency (FEMA) evaluates offsite emergency preparedness activities. The licensee successfully conducted an NRC/FEMA-evaluated full participation exercise for SONGS on October 27, 28, and 29, 1999.

By letter dated September 18, 2001, the licensee requested an exemption from Sections IV.F.2.b and c of Appendix E regarding the conduct of a full participation onsite and offsite exercise originally scheduled for September 12, 2001. Specifically, the licensee requested a one-time exemption, in accordance with 10 CFR 50.12, ''Specific exemptions,'' from the requirements in 10 CFR Part 50, Appendix E, Items IV.F.2.b and c to perform a biennial exercise of the onsite and offsite EPPs with full participation of each offsite authority having a role under the plan (*i.e.,* a full participation EPP exercise), for SONGS. A full participation onsite and offsite exercise had been scheduled for SONGS for September 12, 2001; however, as a result of the national security events occurring in the United States on September 11, 2001, this exercise was canceled. The licensee requested that the biennial exercise for 2001 not be conducted as required by Appendix E, and the next full participation exercise be conducted in 2003 and every two years thereafter.

The licensee has provided the Commission with copies of letters from five local authorities that would participate in the full participation EPP exercise at SONGS, requesting relief from FEMA to cancel the 2001 SONGS full participation exercise. The letters were to the Governor's Office of Emergency Services, State of California, which in its letter dated December 13,

2001, to FEMA, requested the cancellation from FEMA for the State and the five local authorities. The State requested that the next biennial full participation exercise to be held at SONGS with NRC/FEMA participation be conducted in 2003. Although the requests from the State and local authorities do not come under the responsibility and authority of the Commission, the Commission realizes that the full participation exercise required by Appendix E would require the participation of the State and these local authorities. The State's letter is addressed in the safety evaluation dated December 21, 2001.

Based on the safety evaluation dated December 21, 2001, the Commission concludes that the licensee's request for an exemption should be denied. However, because the scheduled 2001 full participation exercise to meet the regulations was canceled for good cause; there is insufficient time before January 1, 2002, when the licensee would be in violation of the regulations, to prepare and conduct the exercise; and the licensee has provided sufficient information for a one-year schedular extension to the requirements in the regulations, the Commission concludes that such a schedular exemption to the biennial exercise requirements in Sections IV.F.b and c of Appendix E to 10 CFR Part 50 should be granted to SONGS.

The Commission, pursuant to 10 CFR 50.12(a)(1), may grant exemptions from the requirements of 10 CFR Part 50 that are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security. The Commission, however, pursuant to 10 CFR 50.12(a)(2), will not consider granting an exemption unless special circumstances are present. Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

**III**

The revised exemption is a one-time postponement of the 2001 full participation exercise for SONGS. The full participation exercise may be conducted in 2002. It is requested that the exercise be conducted as soon as practical, but the challenges of rescheduling the exercise are recognized and the exemption is not predicated on the early conduct of the exercise. Subsequent full participation exercises for SONGS would be scheduled at no greater than 2-year intervals in accordance with 10 CFR part 50, appendix E, Section IV.F.2.c. The calendar biennium for SONGS would not be affected by this schedular exemption and the next full participation exercise would be required to be performed in 2003. Accordingly, the exemption would provide only temporary relief from that regulation.

As indicated in the licensee's request for an exemption of September 18, 2001, the licensee had originally scheduled a full participation exercise for September 12, 2001. As further set forth in that letter, as a result of the national security events occurring in the United States on September 11, 2001, this exercise was canceled. Accordingly, the licensee made a good faith effort to comply with the schedular requirements of Appendix E for full participation exercises.

The NRC staff has completed its evaluation of the revised exemption. The NRC staff, having considered the schedule and resource issues resulting from this schedular exemption and the fact that the licensee successfully conducted the last full participation exercise for SONGS on October 27, 28, and 29, 1999, which was evaluated by the NRC and FEMA, and conducted a full participation ''dress rehearsal'' exercise on August 8, 2001, in preparation for the September 12, 2001, exercise that was canceled, finds the request for a schedular exemption for rescheduling the 2001 biennial full participation exercise acceptable. The inspection/evaluation by NRC and FEMA indicated that the performance demonstrated during the 1999 exercise was a satisfactory test of the EPP. In its letter, the licensee stated that it successfully conducted the ''dress rehearsal'' exercise on August 8, 2001, with the same emergency planning elements that were planned for the September 12, 2001, exercise. The NRC staff also recognizes that it was not appropriate to conduct an exercise during the period of disruption and heightened security directly after the national emergency of September 11, 2001. However, in this period of heightened security concerns regarding nuclear plant vulnerability, it is prudent to conduct the full participation exercise as soon as practical to demonstrate and maintain readiness.

**IV**

The Commission has determined that, pursuant to 10 CFR Part 50, Appendix E, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and is otherwise in the public interest. Further, the Commission has determined, pursuant to 10 CFR 50.12(a), that special circumstances of 10 CFR 50.12(a)(v) are applicable in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. Therefore, the Commission hereby grants a one year schedular exemption from Sections IV.F.2.b and c of Appendix E to 10 CFR Part 50.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (66 FR 66000).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of December 2001.

For the Nuclear Regulatory Commission

**Ledyard B. Marsh,**

*Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 01–32061 Filed 12–28–01; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste; Revised

The 131st ACNW meeting scheduled to be held on January 8–10, 2002, has been *changed to a two-day meeting, which will be held on January 8–9, 2002*. The ACNW meeting with the NRC Commissioners scheduled to be held between 9:30 and 11:30 a.m. on January 9, 2002 has been canceled, and will be rescheduled for March 20, 2002. Notice of this meeting was previously published in the **Federal Register** on Wednesday, December 19, 2001, (66 FR 65522). A revised agenda is provided below.

**Tuesday, January 8, 2002**

A. *8:30—10:45 A.M.: Opening Statement/Planning and Procedures* (Open)—The Chairman will open the meeting with brief opening remarks. The Committee will then review items under consideration at this meeting and consider topics proposed for future ACNW meetings.

B. *11:00—12:00 Noon: Proposed Amendment to 10 CFR Part 63* (Open)—The staff will provide an information briefing on the proposed amendment to 10 CFR Part 63, that would clarify the types of features, events, and processes that must be considered in performance analyses of human intrusion and

groundwater protection at the Yucca Mountain repository.

C. *1:00—4:45 P.M.: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports on the following topics:

- ACRS/ACNW November 14, 2001 Joint Subcommittee Meeting on Risk-Informed Regulation in NMSS
- Annual Research Report to the Commission
- Proposed Rule on Probability of an Unlikely Event
- Conservatism

D. *5:00—6:00 P.M.: Planning for ACNW Retreat* (Open)—The Committee will finalize plans for its February 27–28—March 1, 2002 retreat.

**Wednesday, January 9, 2002**

E. *8:30—8:35 A.M.: Opening Remarks by the ACNW Chairman* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

F. *8:35—3:00 P.M.: Discussion of Key Technical Issue (KTI) Status* (Open)—The Committee will be briefed on the status of the KTIs for the proposed repository at Yucca Mountain, NV.

G. *3:00—6:00 P.M.: ACRS/ACNW Office Retreat* (Open)—The Committee will meet with the ACNW technical and operational staffs to discuss issues arising from the ACRS/ACNW Office retreat held on September 19–21, 2001.

H. *6:00—6:15 P.M.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

**Note:** The 132nd ACNW Meeting scheduled for February 7, 2002, has been tentatively rescheduled for February 5–7, 2002.

For further information contact: Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8:00 A.M. and 4:00 P.M. EST.

Dated: December 21, 2001.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 01–32050 Filed 12–28–01; 8:45 am]

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## NUCLEAR WASTE TECHNICAL REVIEW BOARD

### Board Meeting: January 29–30, 2002—Pahrump, Nevada: The Nuclear Waste Technical Review Board Will Hold a Meeting To Discuss Issues Related to the Department of Energy's (DOE) Characterization of a Potential Repository Site at Yucca Mountain, Nevada. A Program Overview and Scientific Updates Will Be Presented. Other Topics Included recently Issued DOE Documents Related to Site Recommendation and Analyses of the DOE's Total System Performance Assessment

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, on Tuesday, January 29, and Wednesday, January 30, 2002, the Nuclear Waste Technical Review Board (Board) will hold a meeting in Pahrump, Nevada, to discuss the status of U.S. Department of Energy (DOE) efforts to characterize a site at Yucca Mountain, Nevada, as the possible location of a permanent repository for spent nuclear fuel and high-level radioactive waste. Among other things, representatives of the DOE and other agencies and groups will present scientific updates on research related to Yucca Mountain and on the results of recently issued studies related to the technical basis for a decision by the Secretary of Energy on whether to recommend Yucca Mountain for repository development. The meeting is open to the public, and opportunities for public comment will be provided. The Board is charged by Congress with reviewing the technical and scientific validity of DOE activities related to managing spent nuclear fuel and high-level radioactive waste.

The meeting will be held at the Bob Ruud Community Center, 150 North Highway 160, Pahrump, Nevada 89048. The pay-phone number for the community center is (775) 727–9991. The meeting sessions will begin at 8:30 a.m. on both days.

The full-day session on Tuesday will begin with a general overview of the DOE program and a briefing on the regulatory framework for a site recommendation. These presentations will be followed by scientific updates in several areas, including fluid inclusions, chlorine-36 studies, saturated zone modeling, and other scientific investigations. Discussions of findings of the U.S. Geological Survey, and comments on the DOE's Total System Performance Assessment by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Nuclear Waste, an international peer review group, and others, will follow.

On Wednesday, discussions will continue on recently released documents, including a report by the DOE on uncertainty and the DOE's Technical Update Information Letter Report. Following these presentations, representatives of the NRC will comment on the NRC's ''sufficiency'' review. The meeting is scheduled to adjourn at approximately 12:30 p.m.

Opportunities for public comment will be provided before lunch on Tuesday and before adjournment on both days. Those wanting to speak during the public comment periods are encouraged to sign the ''Public Comment Register'' at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record. Interested parties also will have the opportunity to submit questions in writing to the Board. As time permits, the questions will be answered during the meeting. In addition, on Wednesday, from 7:30 a.m. to 8:15 a.m., Board members will host a ''coffee and donuts'' get together for members of the public attending the meeting at the Bob Ruud Community Center.

A detailed agenda will be available approximately one week before the meeting. Copies of the agenda can be requested by telephone or obtained from the Board's Web site at *www.nwtrb.gov.* Beginning on March 4, 2002, transcripts of the meeting will be available on the Board's Web site, via e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board staff.

A block of rooms has been reserved at the Best Western Pahrump Station, 1101 South Highway 160, Pahrump, Nevada 89048; (tel) 775–751–5100; (fax) 775–751–1325. When making a reservation, please state that you are attending the Nuclear Waste Technical Review Board meeting.

For more information, contact the NWTRB; Karyn Severson, External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; (tel) 703–235–4473; (fax) 703–235–4495; (e-mail) *info@nwtrb.gov.*

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987. The Board's purpose is to evaluate the technical and scientific validity of activities undertaken by the Secretary of Energy related to managing the disposal of the nation's spent nuclear fuel and high-level radioactive waste. In the same legislation, Congress directed the DOE to characterize a site

at Yucca Mountain, Nevada, to determine its suitability as the location of a potential repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste.

Dated: December 21, 2001.

**William D. Barnard,**

*Executive Director, Nuclear Waste Technical Review Board.*

[FR Doc. 01–32025 Filed 12–28–01; 8:45 am]

**BILLING CODE 6820–AM–M**

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions placed or revoked under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:** Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 November 19, 2001 (66 FR 57992). Individual authorities established or revoked under Schedule C October 1, 2001, through October 31, 2001, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 has been published.

### Schedule C

The following Schedule C authorities were established during November 2001:

*Broadcasting Board of Governors*

Confidential Assistant to the Director, Office of Cuba Broadcasting. Effective October 10, 2001.

Chief of Staff to the Director, Office of Cuba Broadcasting. Effective October 10, 2001.

*Department of Agriculture*

Confidential Assistant to the Deputy Secretary. Effective October 8, 2001.

Confidential Assistant to the Secretary of Agriculture. Effective October 10, 2001.

Confidential Assistant to the Under Secretary for Rural Development. Effective October 12, 2001.

Confidential Assistant to the Director of Communications. Effective October 19, 2001.

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective October 25, 2001.

Confidential Assistant to the Administrator for Risk Management Agency. Effective October 26, 2001.

Confidential Assistant to the Secretary of Agriculture. Effective October 26, 2001.

*Department of the Air Force (DOD)*

Confidential Assistant to the Secretary of the Air Force. Effective October 8, 2001.

*Department of Commerce*

Speechwriter to the Director, Office of Public Affairs. Effective October 1, 2001.

Confidential Assistant to the Assistant Secretary for Trade Development, International Trade Administration. Effective October 2, 2001.

Confidential Assistant to the Chief of Staff. Effective October 2, 2001.

Legislative Affairs Specialist to the Under Secretary for International Trade, International Trade Administration. Effective October 2, 2001.

Special Assistant to the Assistant Secretary for Trade Development, International Trade Administration. Effective October 2, 2001.

Special Assistant to the Assistant Secretary for Communications and Information, National Telecommunications and Information Administration. Effective October 5, 2001.

Senior Advisor to the Assistant Secretary for Communications and Information. Effective October 10, 2001.

Senior Advisor to the Director, Minority Business Development Agency. Effective October 12, 2001.

Director of Communications to the Assistant Secretary for Trade Development, International Trade Administration. Effective October 12, 2001.

Director, Congressional and Public Affairs to the Under Secretary for Export Administration, Bureau of Export Administration. Effective October 15, 2001.

Executive Assistant to the Assistant Secretary for Trade Development. Effective October 15, 2001.

Deputy Communications Director to the Assistant Secretary for Trade Development. Effective October 22, 2001.

Special Assistant to the Under Secretary for Export Administration, Bureau of Export Administration. Effective October 22, 2001.

Chief Of Protocol to the Chief of Staff. Effective October 26, 2001.

Confidential Assistant to the Deputy Assistant Secretary for Export Promotion services. Effective October 26, 2001.

Confidential Assistant to the Director of External Affairs. Effective October 30, 2001.

*Department of Defense*

Personal and Confidential Assistant to the Under Secretary of Defense (Personnel And Readiness). Effective October 2, 2001.

Personal and Confidential Assistant to the Secretary of Defense. Effective October 8, 2001.

Confidential Assistant to the Special Assistant to the Secretary of Defense (White House Liaison). Effective October 8, 2001.

Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legislative Affairs). Effective October 22, 2001.

Special Assistant to the Deputy Under Secretary of Defense (International Technology Security). Effective October 25, 2001.

Personal and Confidential Assistant to the Secretary of Defense. Effective October 25, 2001.

Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison). Effective October 26, 2001.

Special Assistant for White House Liaison to the Special Assistant to the Secretary of Defense (White House Liaison). Effective October 30, 2001.

Speechwriter to the Director, Directorate for Editorial Services. Effective October 31, 2001.

*Department of Education*

Confidential Assistant to the Director, White House Initiative on Hispanic Education. Effective October 2, 2001.

Confidential Assistant to the Deputy Assistant Secretary for Regional Services. Effective October 2, 2001.

Special Assistant to the Secretary of Education. Effective October 15, 2001.

Special Assistant to the Senior Advisor to the Secretary. Effective October 19, 2001.

Confidential Assistant to the Director of Scheduling and Briefing. Effective October 19, 2001.

Deputy Assistant Secretary for Regional Services to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective October 22, 2001.

Special Assistant to the Director, White House Initiatives on Hispanic Education. Effective October 22, 2001.

Deputy Assistant Secretary for Intergovernmental, Constituent Relations and Corporate Liaison to the

Assistant Secretary, Office for Intergovernmental and Interagency Affairs. Effective October 22, 2001.

Special Assistant to the Director, Faith Based and Community Initiatives Center. Effective October 22, 2001.

Special Assistant to the Chief of Staff. Effective October 22, 2001.

Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services. Effective October 22, 2001.

Special Assistant to the Deputy Assistant Secretary for Regional Services. Effective October 22, 2001.

Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs. Effective October 24, 2001.

Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective October 24, 2001.

Special Assistant to the Deputy Assistant Secretary for Intergovernmental, Constituent Relations and Corporate Liaison. Effective October 24, 2001.

Confidential Assistant to the Counselor to the Secretary. Effective October 24, 2001.

Special Assistant to the Deputy Secretary. Effective October 24, 2001.

Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective October 24, 2001.

Special Assistant to the Chief of Staff. Effective October 29, 2001.

Confidential Assistant to the Deputy Assistant Secretary for Enforcement. Effective October 30, 2001.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective October 30, 2001.

Special Assistant to the Assistant Secretary for Legislation and Congressional Affairs. Effective October 30, 2001.

Secretary's Regional Representative, Region VIII to the Deputy Assistant Secretary for Regional Services. Effective October 30, 2001.

Confidential Assistant to the Director, Office of Bilingual and Minority Languages Affairs. Effective October 31, 2001.

*Department of Energy*

Special Assistant to the Assistant Secretary for Environment, Safety and Health. Effective October 12, 2001.

Special Assistant to the Director, Office of Scheduling and Advance. Effective October 16, 2001.

Assistant Secretary for International Affairs. Effective October 24, 2001.

Daily Scheduler to the Director of Scheduling and Advance. Effective October 24, 2001.

Deputy Director of Advance to the Director of Scheduling and Advance. Effective October 26, 2001.

Executive Assistant to the Under Secretary. Effective October 26, 2001.

Staff Assistant to the Deputy Assistant Secretary for Natural Gas and Petroleum Technology. Effective October 26, 2001.

Senior Policy Advisor to the Secretary. Effective October 26, 2001.

Confidential Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 26, 2001.

*Department of Health and Human Services*

Confidential Assistant to the Executive Secretary. Effective October 2, 2001.

Special Assistant to the Deputy Secretary of Health and Human Services. Effective October 5, 2001.

Special Assistant to the Administrator, Human Resources and Services Administration. Effective October 17, 2001.

Executive Director, President's Council on Physical Fitness and Sports to the Assistant Secretary for Health. Effective October 24, 2001.

Special Assistant to the General Counsel. Effective October 26, 2001.

Director, Correspondence Control Center to the Executive Secretary. Effective October 26, 2001.

*Department of Housing and Urban Development*

Staff Assistant to the Director of Scheduling. Effective October 8, 2001.

Staff Assistant to the Assistant Secretary for Administration. Effective October 12, 2001.

Special Assistant to the Assistant Secretary for Community Planning and Development. Effective October 12, 2001.

Staff Assistant to the Assistant Secretary for Community Planning and Development. Effective October 15, 2001.

Staff Assistant to the Deputy Assistant Secretary for Intergovernmental Relations. Effective October 18, 2001.

Special Assistant to the Assistant Secretary for Housing-Federal Housing Commissioner. Effective October 22, 2001.

Advance Coordinator to the Director, Executive Scheduling. Effective October 26, 2001.

Special Assistant (Speech Writer) to the Assistant Secretary for Public Affairs. Effective October 26, 2001.

Special Assistant to the Secretary. Effective October 29, 2001.

*Department of the Interior*

Special Assistant to the Assistant Secretary, Policy Management and Budget. Effective October 2, 2001.

Special Assistant to the Assistant Secretary, Indian Affairs. Effective October 30, 2001.

*Department of Justice*

Senior Policy Advisor to the Assistant Attorney General, Office of Legal Policy. Effective October 2, 2001.

Attorney Advisor to the Assistant Attorney General, Civil Rights Division. Effective October 2, 2001.

Assistant to the Attorney General. Effective October 2, 2001.

Special Assistant to the Deputy Attorney General. Effective October 2, 2001.

Staff Assistant to the Assistant Attorney General, Office of Justice Programs. Effective October 2, 2001.

Chief of Staff to the Director, Bureau of Justice Assistance, Office of Justice Programs. Effective October 19, 2001.

Special Assistant to the Assistant Attorney General, Office of Justice Programs. Effective October 25, 2001.

Special Assistant to the Solicitor General. Effective October 26, 2001.

Special Assistant to the Director, Office of Intergovernmental Affairs. Effective October 26, 2001.

*Department of Labor*

Research Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 1, 2001.

Secretary's Representative, Chicago, Illinois to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 2, 2001.

Senior Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 12, 2001.

Staff Assistant to the Assistant Secretary for Mine Safety and Health. Effective October 16, 2001.

Chief of Staff to the Assistant Secretary for Policy. Effective October 22, 2001.

Staff Assistant to the Secretary of Labor. Effective October 22, 2001.

Speechwriter to the Assistant Secretary for Public Affairs. Effective October 22, 2001.

Research Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 22, 2001.

Special Assistant to the Deputy Assistant Secretary, Office of Federal Contract Compliance Programs, Employment Standards Administration. Effective October 22, 2001.

Special Assistant to the Assistant Secretary for Public Affairs. Effective October 22, 2001.

Associate Deputy Secretary to the Deputy Secretary. Effective October 22, 2001.

Senior Policy Analyst to the Assistant Secretary for Policy. Effective October 22, 2001.

Deputy Assistant Secretary to the Assistant Secretary, Veterans Employment and Training. Effective October 22, 2001.

Staff Assistant to the Director, Office of Labor Management Standards. Effective October 22, 2001.

Staff Assistant to the Director, 21st Century Workforce. Effective October 22, 2001.

Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 22, 2001.

Special Assistant to the Assistant Secretary for Veterans' Employment and Training. Effective October 22, 2001.

Special Assistant to the Director, 21st Century Workforce. Effective October 22, 2001.

Special Assistant to the Assistant Secretary for Public Affairs. Effective October 22, 2001.

Senior Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 22, 2001.

Secretary's Representative to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs. Effective October 31, 2001.

*Department of State*

Program Support Assistant to the Foreign Affairs Officer. Effective October 3, 2001.

Staff Assistant to the Assistant Secretary. Effective October 8, 2001.

Special Assistant to the Under Secretary. Effective October 8, 2001.

Member, Policy Planning Staff to the Director, Policy Planning Staff. Effective October 8, 2001.

Special Assistant to the Assistant Secretary for Public Affairs. Effective October 8, 2001.

Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective October 8, 2001.

Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective October 8, 2001.

Staff Assistant to the Deputy Assistant Secretary. Effective October 8, 2001.

Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective October 9, 2001.

Member, Policy Planning Staff to the Director, Policy Planning Staff. Effective October 9, 2001.

Executive Assistant to the Deputy Secretary of State. Effective October 9, 2001.

Special Assistant to the Senior Advisor to the Secretary, White House Liaison. Effective October 9, 2001.

Special Assistant to the Under Secretary for Arms Control and International Security. Effective October 9, 2001.

Special Assistant to the Assistant Secretary for Legislative Affairs. Effective October 9, 2001.

Legislative Analyst to the Assistant Secretary for Legislative Affairs. Effective October 9, 2001.

Special Assistant to the Assistant Secretary for Political-Military Affairs. Effective October 9, 2001.

Legislative Management Officer to the Assistant Secretary for Legislative Affairs. Effective October 9, 2001.

Special Assistant to the Assistant Secretary, Bureau of East Asian and Pacific Affairs. Effective October 9, 2001.

Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective October 9, 2001.

Member, Policy Planning Staff to the Director, Policy Planning Staff. Effective October 9, 2001.

Special Assistant to the Director, White House Liaison Staff. Effective October 9, 2001.

Attorney Advisor to the Assistant Secretary for Civil Rights. Effective October 10, 2001.

Legislative Analyst to the Assistant Secretary for Legislative Affairs. Effective October 12, 2001.

Legislative Management Officer to the Assistant Secretary for Legislative Affairs. Effective October 12, 2001.

Special Assistant to the Assistant Secretary for European Affairs. Effective October 16, 2001.

Staff Assistant to the Director, White House Liaison Staff. Effective October 16, 2001.

Staff Assistant to the Assistant Secretary for International Narcotics and Law Enforcement Affairs. Effective October 16, 2001.

Special Assistant to the Deputy Secretary of State. Effective October 16, 2001.

Special Advisor to the Assistant Secretary, Bureau of East Asian and Pacific Affairs. Effective October 16, 2001.

Supervisory Foreign Affairs Officer to the Under Secretary for Global Affairs. Effective October 18, 2001.

Staff Assistant to the Director, White House Liaison Staff. Effective October 19, 2001.

Staff Aide to the Assistant Secretary for Civil Rights. Effective October 19, 2001.

Special Assistant to the Assistant Secretary for African Affairs. Effective October 19, 2001.

Staff Assistant to the Under Secretary for Arms Control and International Security. Effective October 19, 2001.

Special Assistant to the Assistant Secretary for Educational and Cultural Affairs. Effective October 19, 2001.

Staff Assistant to the Director, Policy Planning Staff, Office of the Secretary. Effective October 19, 2001.

Staff Assistant to the Under Secretary for Arms Control and International Security. Effective October 19, 2001.

Supervisory Management Analyst to the Deputy Assistant Secretary for Buildings Operations. Effective October 19, 2001.

Legislative Management Officer to the Assistant Secretary for Legislative Affairs. Effective October 19, 2001.

Senior Policy Advisor to the Assistant Secretary for Legislative Affairs. Effective October 19, 2001.

Special Assistant to the Assistant Secretary for African Affairs. Effective October 22, 2001.

Legislative Management Officer to the Assistant Secretary, Bureau of Legislative Affairs. Effective October 23, 2001.

Program Officer (Director of Press Center) to the Assistant Secretary for Public Affairs. Effective October 24, 2001.

Senior Advisor to the Under Secretary for Arms Control and International Security. Effective October 24, 2001.

*Department of Transportation*

Special Assistant to the Administrator, Maritime Administration. Effective October 2, 2001.

Special Assistant to the Administrator, Research and Special Programs Administration, Office of the Administrator. Effective October 5, 2001.

Special Assistant to the Director of Scheduling and Advance. Effective October 10, 2001.

Special Assistant to the Secretary of Transportation. Effective October 10, 2001.

Executive Assistant to the Assistant to the Secretary and Director of Public Affairs. Effective October 19, 2001.

*Department of Veterans Affairs*

Special Assistant (Deputy White House Liaison) to the Deputy Assistant Secretary for Public Affairs. Effective October 3, 2001.

Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer). Effective October 24, 2001.

Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective October 24, 2001.

*Export-Import Bank of the United States*

Special Assistant to the Vice President Congressional and External Affairs. Effective October 1, 2001.

*Federal Emergency Management Agency*

Policy Advisor for Congressional and Intergovernmental Affairs to the Division Director, Congressional and Intergovernmental Affairs Division. Effective October 18, 2001.

*Federal Trade Commission*

Deputy Director to the Director, Office of Public Affairs. Effective October 1, 2001.

*General Services Administration*

Congressional Relations Officer to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective October 2, 2001.

White House Liaison to the Chief of Staff. Effective October 29, 2001.

*Office of Personnel Management*

Special Assistant to the Director, Office of Communications. Effective October 3, 2001.

Special Assistant to the Director, Office of Congressional Relations. Effective October 22, 2001.

Special Assistant to the Chief of Staff. Effective October 22, 2001.

Scheduling and Briefing Coordinator to the Chief of Staff. Effective October 22, 2001.

Special Assistant to the Director, Office of Congressional Relations. Effective October 26, 2001.

*Office of the United States Trade Representative*

Confidential Assistant to the Deputy U.S. Trade Representative. Effective October 18, 2001.

Deputy Assistant U.S. Trade Representative for Congressional Affairs to the Assistant U.S. Trade Representative for Congressional Affairs. Effective October 31, 2001.

Confidential Assistant to the Chief of Staff. Effective October 31, 2001.

*Overseas Private Investment Corporation*

Confidential Assistant to the Chief of Staff. Effective October 2, 2001.

*Small Business Administration*

Special Assistant to the Administrator. Effective October 2, 2001.

Assistant Administrator for Public Communications to the Associate Administrator for Communications and Public Liaison. Effective October 2, 2001.

Senior Advisor for International Trade to the Assistant Administrator for International Trade. Effective October 2, 2001.

Regional Administrator, Region IX, San Francisco to the Administrator, Small Business Administration. Effective October 4, 2001.

Regional Administrator, Region V, Chicago, IL to the Associate Administrator for Field Operations. Effective October 19, 2001.

Assistant Scheduler to the Scheduler for the Administrator. Effective October 22, 2001.

Special Assistant to the Associate Administrator for Communications and Public Liaison. Effective October 22, 2001.

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958, Comp., p. 218

**Kay Coles James,**

*Director, Office of Personnel Management.*

[FR Doc. 01–31899 Filed 12–28–01; 8:45 am]

BILLING CODE 6325–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Plains Resources, Inc., Common Stock, $.10 Par Value), File No. 1–10454

December 21, 2001.

Plains Resources, Inc. a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.10 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Issuer has stated in its application that it has complied with the rules of the Amex by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

On November 6, 2001, the Board of Directors of the Issuer unanimously approved a resolution to withdraw its Security from listing on the Amex and to list it on the New York Stock Exchange, Inc. (''NYSE''). In its application, the Issuer stated that trading in the Security on the Amex ceased on December 20, 2001, and trading in the Security is expected to begin on the NYSE at the opening of business on December 21, 2001. In making the decision to withdraw the Security from listing on the Exchange, the Issuer represents that it seeks to avoid the direct and indirect costs and division of the market resulting from dual listing on the Amex and the NYSE.

The Issuer's application relates solely to the Security withdrawal from listing on the Amex and shall affect neither its approval for trading on the NYSE nor its obligation to be registered under section 12(g) of the Act.[3]

Any interested person may, on or before January 16, 2002 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01–32080 Filed 12–28–01; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27482; International Release Series No. 1253]**

### Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

December 21, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(g).

[4] 17 CFR 200.30–3(a)(1).

public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 17, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After January 17, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**E.ON AG, et al. (70–9961)**

E.ON AG (''E.ON''), a German holding company exempt from registration by rule 5 under the Act, located at E.ON-Platz 1, 40479 Düsseldorf, Germany, and Powergen plc (''Powergen''), a U.K. registered holding company located at City Point, 1 Ropemaker Street, London ECY 9HT, United Kingdom, together with subsidiaries of Powergen listed below, have filed a joint application-declaration, as amended, (''Application'') under sections 2(a)(8), 4, 5, 6(a), 7, 9(a)(2), 10, 13, 14, 15, 32 and 33 of the Act and rules 42, 45(a), 52, 53, 54, 80 through 91, 93 and 94 under the Act.

The Application seeks authorizations in connection with E.ON's proposed acquisition of the outstanding voting securities of Powergen (the ''Acquisition'').[1] Authorization is required under sections 9(a)(2) and 10 of the Act because the Acquisition would result in E.ON's indirect acquisition of Powergen's indirect subsidiary LG&E Energy Corp. (''LG&E Energy''), a Kentucky holding company exempt from registration under section 3(a)(1) of the Act, and LG&E Energy's public-utility subsidiary companies, Louisville Gas and Electric Company (''LG&E'') and Kentucky Utilities Company (''KU'').[2] Following the Acquisition, E.ON would register as a holding company under the Act. The other applicants, all registered holding companies, are direct and indirect wholly owned subsidiaries of Powergen: Powergen US Holdings Limited, Powergen US Investments, Powergen Luxembourg sarl, Powergen Luxembourg Holdings sarl, Powergen Luxembourg Investments sarl, Powergen US Investments Corp. (''PUSIC'') (collectively, the ''Powergen Intermediate Holding Companies,'' and, together with E.ON and Powergen, ''Applicants''), all at City Point, 1 Ropemaker Street, London EC2Y 9HT, United Kingdom.

*I. Summary*

E.ON seeks authorization to acquire all of the issued and outstanding common stock of Powergen. Through the acquisition, E.ON would indirectly acquire LG&E Energy and its direct and indirect subsidiary companies, including its electric utility subsidiary companies, LG&E and KU.[3] E.ON seeks to retain LG&E Energy as a public-utility holding company subsidiary exempt from registration under section 3(a)(1) of the Act. E.ON will register as a holding company following the Acquisition.

In addition, E.ON requests authorization:

(1) To issue loan notes and make certain guarantees in connection with the Acquisition;

(2) To own its existing utility operations as foreign utility companies (''FUCOs''), as defined in section 33 of the Act, and certain nonutility businesses and other businesses to be acquired;

(3) To invest the proceeds from a planned divestiture of certain of its existing nonutility businesses, which may total approximately $35 billion, in exempt wholesale generators (''EWGs''), as defined in section 32 of the Act, and FUCOs;

(4) To obtain bridge loans to finance those EWG and FUCO investments pending receipt of divestiture proceeds;

(5) To issue securities in an amount up to $25 billion for the purpose of making additional investments in EWGs and FUCOs;

(6) To invest up to $5.5 billion in the nonutility businesses that E.ON plans to divest during the three to five years over which E.ON plans to effect their divestiture;

(7) To retain, and continue to make, investments held as reserves against long-term liabilities regarding pensions and nuclear plant decommissioning as being ''in the ordinary course of business'' under section 9(c)(3), in accordance with German corporate practice;

(8) For E.ON and its subsidiaries, Powergen and its subsidiaries and LG&E Energy and its subsidiaries to engage in intrasystem service transactions, subject to certain conditions;

(9) To exempt from the at-cost requirements of section 13 of the Act certain intrasystem service transactions; and

(10) To make certain corporate structure changes in a restructuring after the Acquisition without having to seek specific authority for each change, subject to certain conditions.

In addition, Applicants request the Commission:

(1) To issue an order under section 2(a)(8) of the Act declaring Ruhrgas AG, a partially owned German subsidiary of E.ON, not to be a subsidiary of a registered holding company *viz.*, E.ON;

(2) To disregard certain intermediate holding companies for purposes of the analysis under section 11(b)(2) of the Act; and

(3) To grant an exemption from rule 26(a)(1) under the Act regarding the maintenance of financial statements in conformance with Regulation S–X for any subsidiary of E.ON organized outside the U.S.

*II. Parties*

A. E.ON

E.ON is an Aktiengesellschaft, the equivalent of a U.S. stock corporation, under the laws of the Federal Republic of Germany. E.ON's shares are traded on all German stock exchanges, the Swiss Stock Exchange and as American Depository Receipts (''ADRs'') on the New York Stock Exchange. E.ON was formed in June 2000 as a result of the merger of German conglomerates VEBA AG (''Veba'') and VIAG AG (''Viag''), which trace their roots to the 1920s. As of December 31, 2000, E.ON was Germany's third largest industrial group, with a market capitalization of approximately Euro 39.5 billion (approximately $35.7 billion) as of April 6, 2001, the last business day before the announcement of the Acquisition.

For the nine months ended September 30, 2001, E.ON had revenues of Euro 64.3 billion ($58.7 billion) and net income of Euro 1.0 billion ($0.9 billion). As of September 30, 2001, E.ON had net assets of Euro 23.2 billion ($21.2 billion) and a market capitalization of approximately Euro 43.4 billion ($39.6 billion).

[1] E.ON has also filed a separate application with the Commission for approval of its proposed external financing program (File No. 70–9985, ''Financing Application'').

[2] The Commission authorized Powergen to acquire LG&E Energy by order dated December 6, 2000. *See PowerGen plc.* Holding Co. Act Release No. 27291 (''Powergen Order'').

[3] Through the Acquisition, E.ON would also indirectly acquire the common stock that LG&E and KU own (4.9% and 2.5%, respectively) of Ohio Valley Electric Corp. (''OVEC''), an electric utility. OVEC in turn has one wholly owned electric utility subsidiary, Indiana-Kentucky Electric Corp. (''IKEC'').

E.ON's corporate subsidiaries are currently organized into eight separate business divisions: Energy, chemicals, real estate, oil, telecommunications, distribution/logistics, aluminum and silicon wafers. E.ON and all its direct and indirect subsidiaries are referred to as the ''E.ON Group.'' Each business division is responsible for managing its own day-to-day business, while E.ON provides strategic management for E.ON Group members and coordinates E.ON Group activities. E.ON also provides centralized controller, treasury, risk management and service functions to group members, as well as functions relating to communications, capital markets and investor relations.

1. E.ON Energie (Proposed FUCO)

E.ON's energy division, which accounts for 54% of E.ON's total investments, is headed by its wholly owned subsidiary, E.ON Energie AG (''E.ON Energie''). E.ON Energie was formed in July 2000, following completion of the merger between VEBA and VIAG, when E.ON merged the two major energy divisions of those companies. E.ON Energie's core business consists of the ownership and operation of power generation facilities, and the transmission and distribution of electric power, gas and heat and energy-related businesses, including the supply of water and water-related services. At the time of, or prior to, the Acquisition, E.ON intends to qualify E.ON Energie as a ''foreign utility company'' (''FUCO'') as defined in section 33 of the Act.

E.ON Energie conducts its retail energy business through a number of mostly majority-owned subsidiaries and its utility distribution and supply business through a number of majority-owned subsidiaries in Germany.[4] E.ON Energie supplied about one-third of the electricity consumed in Germany in 2000. In 2000, E.ON Energie sold 125.9 billion kWh of electricity in western Germany and 24.1 billion kWh in eastern Germany and exported 19.9 billion kWh.[5] E.ON Energie also conducts a marketing and energy trading business through its wholly owned subsidiary, E.ON Trading GmbH.

Applicants state that E.ON is committed to retain and expand its multi-utility business, which under prevailing European industry practice, includes not only electric and gas service but also water, waste management and other services. Privatized utility functions that E.ON has acquired from municipalities have often included electric, gas, heat and water as part of a bundled service.

E.ON Energie holds stakes in various regional electricity and gas distributors and in municipal utilities (''Stadtwerke''). For historical and political reasons, E.ON Energie rarely owns 100% of the regional utilities or Stadtwerke.

E.ON Energie's principal water-related activities are centered in the German stock exchange-listed company Gelsenwasser, the largest privately held water utility in Germany (based on volume of water deliveries). Gelsenwasser also provides gas utility services. E.ON Energie holds an 80.5% equity interest through its wholly owned subsidiary E.ON Aqua GmbH.

In 2000, E.ON Energie had total revenues of approximately Euro 11 billion ($9.7 billion). Gas and electricity revenues (including district heating) accounted for 89% of these revenues. Of the remaining revenues, 2% were attributable to water activities and 9% were derived from other sales.

2. Gelsenberg AG (Proposed FUCO)

On July 16, 2001, E.ON and BP plc announced that they had reached an agreement to reorganize their oil and gas business. As part of this reorganization and the related transactions, British Petroleum and E.ON have agreed that E.ON will acquire, after January 1, 2002, 51% of Gelsenberg AG (''Gelsenberg''), currently a wholly owned subsidiary of British Petroleum, by means of a capital increase.[6] Beginning on January 1, 2002, British Petroleum will have the option to sell its remaining 49% interest in Gelsenberg to E.ON.

Gelsenberg directly and indirectly owns 25.5% of Ruhrgas AG (''Ruhrgas''), Germany's largest natural gas transmission, storage, distribution and import company, with total sales of approximately 50 billion cubic meters of gas.[7] These operations account for 88% of Ruhrgas' total revenues of Euro 7.3 billion ($6.4 billion). Most of Ruhrgas' remaining revenues of are generated by activities that support the import and transport of gas.

Ruhrgas owns a high-pressure grid that covers nearly all of western Germany. In addition, it owns stakes in regional gas transmission companies, local gas distributors and Stadtwerke in Germany and elsewhere in Europe. Stadtwerke frequently also sell electricity, water and other services. Ruhrgas owns minor stakes of 5% to 9% in four gas fields and a 5% stake in its main gas supplier, the Russian gas company, Gazprom. Ruhrgas supplies gas to E.ON, among others. Ruhrgas also manufactures equipment for the gas industry, such as meters, to assist its customers in their use of Ruhrgas gas and to strengthen its relationship with those customers.

Ruhrgas owns a U.S. manufacturer of metering equipment, American Meter Company of Horsham, Pennsylvania. Applicants state that Ruhrgas is also engaged in gas-related engineering activities in the United States of the type permitted to be acquired under rule 58(b)(1)(vii).

Applicants state that Gelsenberg will certify as a FUCO after the completion of the VEBA Oel divestiture transactions discussed below.

3. Other Nonutility Interests Proposed To Be Retained

a. *Cellular Telephone Providers.* Through two intermediate holding companies, E.ON Telecom GmbH (formerly VEBA Telecom) and VIAG Telecom Beteiligungs GmbH, E.ON holds interests in telecommunications and cellular phone providers in Austria (50.1%) and France (17.5%). E.ON has disposed of most of its telecommunications business activities during 1999 and 2000, but currently intends to retain the cellular phone providers. Exhibit G–1 to the application states that these two companies will apply to the Federal Communications Commission for status

[4] These companies are identified in Exhibit G–1 to the Application.

[5] E.ON Energie's power transmission grid is located in the German states of Schleswig-Holstein, Lower Saxony, North Rhine-Westphalia, Hesse, Bavaria and Mecklenburg-Western Pomerania and reaches from Scandinavia to the Alps. The grid is interconnected with the western European power grid with links to the Netherlands, Austria, Switzerland and eastern Europe. With a system length of over 37,000 km (23,000 miles) and a coverage area of nearly 170,000 square km (66,000 square miles), the grid covers more than one-third of the surface area of Germany.

E.ON Energie owns interests in and operates electric power generation facilities with a total installed capacity of more than 37,000 MW, its attributable share of which is approximately 29,000 MW (not including mothballed, shut down or inactive power plants). On July 12, 2001, E.ON Energie and Verbund, an Austrian utility company, signed a Memorandum of Understanding concerning the establishment of a combined company for hydroelectric power production. To form European Hydro Power (''EHP''), E.ON Energie will contribute its subsidiary, E.ON Wasserkraft GmbH, and Verbund will contribute its stake in Austrian Hydro Power. E.ON Energie will have a 40% share in EHP and Verbund will own the remaining 60%. The new company will own some 200 hydroelectric power plants with a capacity of 9,600 MW. EHP is expected to commence operations by January 1, 2002.

[6] E.ON will acquire Gelsenberg as part of a transaction with BP plc by which E.ON will divest its subsidiary Veba Oel, as described below.

[7] E.ON currently owns less than a 1% interest in Ruhrgas. E.ON also indirectly holds an additional 18% interest in Ruhrgas through E.ON's interest in RAG AG, discussed below. E.ON's indirect interests in Ruhrgas participate in a voting pool that includes 59% of the voting power of Ruhrgas.

as ''exempt telecommunications companies'' under section 34 of the Act.

b. *RAG AG.* E.ON directly and indirectly owns 39.2 % of the shares of RAG AG (''RAG''), a unique entity created under the auspices of the German government to own all operating coal mines in Germany.[8] RAG owns 18% of Ruhrgas, described above. E.ON proposes to retain its ownership interest in RAG after becoming a registered holding company and requests an order of the Commission under section 2(a)(8) of the Act declaring RAG not to be a subsidiary company of E.ON under the Act.

c. *E.ON North America Inc. and Fidelia Inc.* E.ON North America Inc. (''E.ON NA''), a wholly owned subsidiary of E.ON, has served in the past as the holding company for certain of E.ON's activities in North America, handling certain finance, legal, tax and other service functions. E.ON NA owns Fidelia Inc. (''Fidelia''), a finance company subsidiary organized under Delaware law. Fidelia lends money exclusively to E.ON Group companies in the U.S., including the U.S. subsidiaries of Degussa AG, one of E.ON's to-be-divested subsidiaries, discussed below.

Applicants state that it would be efficient from an operations, tax and financing perspective to integrate E.ON NA and Fidelia under the E.ON U.S. corporate structure post-Acquisition. The proposed restructuring is discussed in section III, infra.

4. Nonutility Subsidiaries To Be Divested (''TBD Subsidiaries'')

E.ON intends to divest certain nonutility subsidiaries and their respective subsidiaries following the Acquisition as part of E.ON's general divestiture program. E.ON explains that its goal is to become a leading global integrated energy and utility company. The TBD Subsidiaries are indicated in E.ON's list of subsidiaries included in Exhibit G–1 to the Application. The activities of the TBD Subsidiaries include chemicals (Degussa AG), real estate (Viterra AG), oil (VEBA Oel), distribution and logistics (Stinnes AG) and aluminum (VAW aluminium AG).[9]

The divestiture of such significant components of E.ON's current business is a major undertaking. Consequently, E.ON proposes to divest Degussa AG and Viterra AG within five years of the date of registration of E.ON as a holding company, and VEB Oel, Stinnes AG and VAW aluminium AG within three years of that date.[10]

Pending divestiture, E.ON proposes to continue to invest in the TBD Subsidiaries to preserve and protect shareholder value and to prevent any diminution in the value or the prospects of the business, until such time as a sale or other exit strategy can be implemented, consistent with the requested order. Accordingly, E.ON intends to redeploy the proceeds of the divestitures in other TBD Subsidiaries and in E.ON's core utility business. E.ON proposes to limit its investments in the TBD Subsidiaries to up to $5.5 billion over the 3–5 year time frame for the contemplated divestitures.

B. Powergen

Powergen is an international integrated energy company with its principal operations in the U.K. and the U.S. Powergen's ordinary shares are listed on the London Stock Exchange and its American Depositary Shares (''ADSs'') are listed on the New York Stock Exchange. Powergen, including its predecessor company, has been a reporting company under the Securities Exchange Act of 1934, as amended (the ''1934 Act''), since 1995 and has filed reports with the Commission in accordance with the requirements of the 1934 Act applicable to foreign private issuers.

For the year ended December 31, 2000, Powergen had revenues of *4,191 million ($6,268 million) and net income under US GAAP of £430 million ($643 million). As at December 31, 2000, Powergen had net assets of £2,286 million ($3,419 million) and a market capitalization of approximately £4.6 billion ($6.9 billion). For the nine months ended September 30, 2001, Powergen had revenues of £4,230 million ($6,210 million) and net income under U.S. GAAP of £152 million ($223 million). As at September 30, 2001, Powergen had net assets of £2,332 million ($3,423 million) and a market capitalization of approximately £4.8 billion ($7 billion).[11] Powergen and all of its direct and indirect subsidiary companies are referred to below as the Powergen Group.[12]

Powergen's two principal subsidiaries are Powergen Group Holdings and Powergen US Holdings Ltd. (''Powergen US Holdings''), both UK companies. Powergen Group Holdings, a FUCO, is the holding company for Powergen's U.K. and international businesses. Powergen Group Holding's wholly owned subsidiary, Powergen UK plc (''Powergen UK'') is one of the UK's leading integrated electricity and gas businesses. As of March 31, 2001, Powergen UK owned or operated approximately 8,200 MW of core generation capacity (of which approximately 7,400 MW is wholly owned and the balance held through joint ventures), and served over three million customer accounts. Powergen's operations in the UK include marketing electricity, gas, telecommunications and other essential services to domestic and business customers; asset management in electricity production and distribution; and energy trading to support those activities. Through Powergen International Ltd, Powergen holds interests in power projects in India and the Asia Pacific Region.

Powergen US Holdings, a registered holding company, is the holding company for Powergen's U.S. business, and is the indirect parent, via the chain of the Powergen Intermediate Holding Companies, of LG&E Energy, which Powergen acquired on December 11, 2000, in accordance with the Powergen Order. PUSIC, one of the Powergen Intermediate Holding Companies, holds all of the outstanding voting securities of LG&E Energy.

LG&E Energy is a holding company exempt by order under section 3(a)(1) of the Act.[13] It is engaged, through its subsidiaries, in power generation and project development; retail gas and electric utility services; and asset-based energy marketing. Its public-utility subsidiary companies, LG&E and KU (the ''Utility Subsidiaries''), serve in the aggregate approximately 857,000 electricity customers and 299,000 gas customers over a transmission and

[8] E.ON has a 37.1% direct interest in RAG; E.ON also has a 2.1% indirect interest in RAG, through its 21% interest in Montan-Verwaltungsgesellschaft mbH, which owns 10% of RAG. RAG owns, indirectly through a subsidiary, RAG Coal International AG, certain coal mines in the Appalachian, Midwestern, and Mountain western regions of the United States that supply certain electric generating units.

[9] Effective October 16, 2001, E.ON sold Klöckner & Co. AG, a wholly owned subsidiary and leading European metal distributor with locations throughout Europe and North America to Balli group of London. Effective November 13, 2001, E.ON sold MEMC Electric Materials Inc., a 71.8% U.S. based-owned subsidiary and a leading worldwide manufacture of silicon wafers.

[10] As part of the reorganization of their oil and gas businesses agreed to by E.ON and BP plc, BP plc will become VEBA Oel's majority shareholder (51%) by subscribing to a capital increase after January 1, 2002. Beginning April 1, 2002, E.ON will have the option to sell its remaining interest in VEBA Oel (49%) to BP plc. Upon completion of this transaction (*i.e.*, after exercising the put option), E.ON will have divested its oil businesses completely.

[11] Amounts originally in pounds were converted at $1.4955:1 pound.

[12] A complete list of the subsidiaries of Powergen and a description of their respective businesses are contained in Exhibit G–2 to the Application.

[13] *See* Powergen Order, *supra* note 2. *See also LG&E Energy Corp.,* Holding Co. Act Release No. 26886 (Apr. 30, 1998) (confirming the exemption).

distribution network covering some 27,000 square miles.[14] LG&E Energy also is engaged through subsidiaries in a variety of nonutility businesses, including independent power generation, foreign utility operations, energy services, and commercial and industrial energy consulting.[15] LG&E Energy and all of its direct and indirect subsidiary companies are referred to below as the LG&E Energy Group.

LG&E engages in the generation, transmission, and distribution of electricity to approximately 364,000 customers in Louisville and 16 surrounding counties. LG&E also purchases, distributes and sells natural gas to approximately 299,000 customers within this service area and in limited additional areas.[16] For the twelve months ended December 31, 2000, LG&E had electric operating revenues of $711.0 million (net of provision for rate refunds), gas operating revenues of $272.5 million, electric operating income of $131.5 million and gas operating income of $17.4 million. For the nine months ended September 30, 2001, LG&E had electric operating revenues of $557.9 million (net of provision for rate refunds), gas operating revenues of $216.1 million, electric operating income of $50.8 million and a gas operating loss of $7.7 million. LG&E is subject to regulation by the Federal Energy Regulatory Commission (''FERC'') and the Kentucky Public Service Commission (the ''Kentucky Commission'').

KU engages in the generation, transmission, and distribution of electricity to approximately 464,000 customers in over 600 communities and adjacent suburban and rural areas in 77 counties in central, southeastern and western Kentucky, and to approximately 29,000 customers in five counties in southwestern Virginia.[17] In Virginia, KU operates under the name Old Dominion Power Company. KU also sells electric energy at wholesale for resale to twelve Kentucky municipalities and one Pennsylvania municipality. In addition, KU owns and operates a small amount of electric utility property in one county in Tennessee. For the year ended December 31, 2000, KU had electric operating revenues of $851.9 million and operating income of $128.1 million. For the nine months ended September 30, 2001, KU had electric operating revenues of $647.5 million and operating income of $58.4 million. KU is subject to regulation by the FERC, the Kentucky Commission, the Virginia State Corporation Commission (the ''Virginia Commission'') and the Tennessee Regulatory Authority (the ''Tennessee Commission'').

*III. The Proposed Acquisition*

Applicants state that acquisitions of U.K. public companies are normally effected by way of tender offer. There is no statutory merger concept in U.K. law. Tender offers for U.K. public companies are regulated by the U.K. City Code on Takeovers and Mergers (the ''City Code'') administered by the Panel on Takeovers and Mergers (the ''Panel'').[18] Although Applicants cannot satisfy the timetable required for tender offers by the City Code, the City Code provides that the Panel may permit the offeror to make a pre-conditional offer announcement, under which the offeror will commence its tender offer only if and when specified conditions, such as receipt of regulatory clearances, are met. In this case, the Panel agreed to the making of a pre-conditional offer announcement by E.ON, under which E.ON will commence its tender offer for Powergen only if and when the relevant United States, European Community and U.K. regulatory approvals have been obtained.[19]

E.ON has, in its announcement of the Acquisition, reserved the right to elect, with the agreement of the Board of Powergen, to acquire the Powergen shares under an alternative U.K. legal procedure known as a ''Scheme of Arrangement.'' This procedure would involve the acquisition of all the outstanding Powergen shares by virtue of an order of the English court under the Companies Act 1985 of the United Kingdom (excluding Northern Ireland), given following approval at a Powergen shareholders' meeting by a majority in number, representing 75% or more in value present and voting, either in person or by proxy, of the Powergen shares. The Scheme of Arrangement would be implemented on the same terms, as applicable, as those that apply to the offer.

Although the timetable for a Scheme of Arrangement is somewhat different from that for a tender offer, Applicants state that similar issues arise in relation to the timing of the approval of the SEC: The court will not grant its order if there are significant conditions outstanding and it may not sanction the Scheme of Arrangement if there has been a substantial passage of time between the date of the shareholders' meeting and the date of the court hearing.

E.ON expects, therefore, that some steps in the Acquisition process would not occur until after an order by the SEC authorizing the Application has been issued. There would be no guarantee, therefore, that the acquisition of Powergen would be consummated following the receipt of the requested order of the Commission, as the shareholders of Powergen may determine that they will not accept the

[14] As noted previously, LG&E and KU own 4.9% and 2.5%, respectively, of the common stock of OVEC, which in turn has one wholly owned subsidiary, IKEC. *See supra* note 2. LG&E and other public utilities organized OVEC and IKEC in 1952 to supply the entire power requirements of the U.S. Department of Energy's gaseous diffusion plant in Pike County, Ohio. All of the electricity sold by OVEC and IKEC is sold either to the U.S. Department of Energy or to the owners of the stock of OVEC (or their subsidiaries, all of which are utility companies). *See Ohio Valley Electric Corp.,* 34 S.E.C. 323 (Nov. 7, 1952). Applicants state that, for each of the three years ended December 31, 1998–2000, LG&E and KU each derived less than 0.2% of net income from their share of the earnings of OVEC.

[15] The Commission approved Powergen's ownership of LG&E Energy's nonutility businesses in the Powergen Order.

[16] The Commission approved Powergen's ownership of LG&E's gas utility business in the Powergen Order.

[17] KU was formerly an exempt holding company by reason of its partial ownership of Electric Energy Inc. (''EEI''). On August 1, 2000, EEI was granted EWG status. *See* 92 F.E.R.C. ¶ 62,079. Consequently, under section 32(e) of the Act, EEI is no longer a public-utility company and KU is no longer a holding company under the Act.

[18] Applicants state that the City Code has no statutory basis but is, in practice, adhered to by parties to takeovers of U.K. public companies.

[19] Requisite approvals include:

(1) A decision by the European Commission not to initiate proceedings under Article 6(1)(c) of the Council Regulation (EEC) 4064/89 (as amended), which governs market concentration and competition in the European Economic Community, or, if such proceedings are initiated, a finding that the concentration is compatible with the common market. (On November 26, 2001 theEuropean Commission authorized the Acquisition.);

(2) An indication by the Director General of the Office of Gas and Electricity Markets in the U.K. that he will not seek modifications to any of the Powergen Group's licenses under the Electricity Act 1989 or the Gas Act 1986 as amended by the Gas Act 1995 and subsequent legislation, including the Utilities Act 2000; that he will not seek undertakings or assurances from any member of the E.ON Group or the Powergen Group except, in each case, on terms acceptable to E.ON acting reasonably; and that in connection with the acquisition by E.ON of Powergen, he will give such consents and/or directions (if any) and/or seek or agree to such modifications (if any) as are, in the reasonable opinion of E.ON, necessary in connection with such licenses;

(3) The expiration of applicable waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976;

(4) The termination of the review and investigation of the offer under the Exon-Florio Amendment to the Defense Production Act of 1950; and

(5) The approval of the Kentucky Commission, the Virginia Commission and the Tennessee Commission under applicable state utility law, the approval of the FERC under the Federal Power Act, and the approval of this Commission under the Act. (All three states and the FERC have approved the Acquisition.).

terms offered by E.ON.[20] Applicants state, however, that it is extremely rare for shareholders of a U.K. public company not to accept an offer that has been recommended by their board.

The Boards of E.ON and Powergen have agreed to the terms of a recommended pre-conditional cash offer to be made by Goldman Sachs International on behalf of E.ON for the capital stock of Powergen.[21] Applicants state that the Board of Powergen intends to recommend to Powergen's shareholders that they accept the offer. There are a number of conditions precedent to the offer.[22]

E.ON proposes to offer £7.65 for each Powergen share and £30.60 for each Powergen ADS (representing four Powergen shares).[23] The offer values the whole of Powergen's capital stock at approximately £5.1 billion ($7.3 billion) (assuming the exercise in full of all outstanding options under Powergen's employee benefit plans). E.ON will acquire Powergen, including its outstanding debt, as at closing. On the basis of the Powergen debt outstanding as at December 31, 2000 of £4.5 billion ($6.4 billion) adjusted for divestitures and announced by Powergen prior to the date of the Agreement, the total value of the proposed acquisition would be £9.6 billion ($13.7 billion).[24]

The offer will extend to all existing issued Powergen shares and to any Powergen shares which are unconditionally allotted or issued prior to the date on which the offer closes (or such earlier date as E.ON may, subject to the City Code, decide), including Powergen shares issued in accordance with the exercise of options under Powergen's employee benefit plans or otherwise. In conjunction with the offer for the Powergen shares, an offer will be made to holders of Powergen ADSs to tender the Powergen shares underlying their ADSs into the offer.

If more than 90% of Powergen shares and Powergen ADSs are tendered or otherwise acquired, E.ON would be able to rely on applicable U.K. law to acquire compulsorily any remaining shares, thus enabling E.ON to acquire 100% of Powergen. If more than 50% of Powergen shares and Powergen ADS, are tendered or otherwise acquired, it would be E.ON's option to declare the offer unconditional, even if E.ON had not acquired the 90% tender that is necessary to implement compulsory acquisition of the dissenting minority.

When the offer becomes unconditional in all respects, Powergen will apply to the London and New York stock exchanges for the Powergen securities to be de-listed. It is anticipated that the cancellation of Powergen's listing on the London Stock Exchange will take effect no earlier than 20 business days after the offer becomes or is declared unconditional in all respects.

To effect the Acquisition, E.ON has established a wholly owned subsidiary, E.ON UK Verwaltungs GmbH (''E.ON UK''), a corporation organized under German law. E.ON UK in turn owns all the outstanding shares of an acquisition vehicle, E.ON UK plc, a corporation organized under the laws of England and Wales, that will acquire all of the outstanding Powergen shares either by tender offer or Scheme of Arrangement, as discussed previously. E.ON UK plc would survive the Acquisition. E.ON would register as a holding company. Powergen would remain a registered holding company, and E.ON UK and E.ON UK plc would also register as holding companies.[25] LG&E and KU would remain first-tier subsidiaries of LG&E Energy and keep their names and headquarters locations. Applicants state that this corporate structure will take into account international tax regulations and clearly separate the domestic utility operations of LG&E and KU from the other businesses of E.ON and Powergen.

As a subsidiary of E.ON UK and E.ON UK plc, Powergen will remain the immediate parent company of Powergen Group Holdings Ltd., the current ''umbrella'' FUCO in the Powergen Group. Powergen will remain responsible for the development and operation of LG&E Energy, LG&E and KU and, in this manner, develop E.ON's Anglo-American energy and utility

[20] Applicants request the Commission to issue an order authorizing the Acquisition before Powergen's shareholders have indicated whether or not they will accept E.ON's tender offer. Applicants state that they will provide prominent disclosure in the relevant solicitation material distributed to Powergen shareholders that the Commission's authorization of the Acquisition is not an endorsement of the Acquisition or a recommendation by the Commission that Powergen shareholders accept the Tender offer or approve the Scheme of Arrangement.

[21] In connection with the offer, E.ON and Powergen have entered into a letter agreement dated April 8, 2001 (the ''Agreement''), which, among other things, provides that Powergen will not solicit competing proposals and describes the steps that are to be taken to satisfy the preconditions to the offer. Under the Agreement, certain fees may be payable by either E.ON or Powergen to the other in certain circumstances. The Agreement will terminate (and the obligations of the parties, including E.ON's obligation to make the offer, will lapse) if the preconditions are not satisfied by July 9, 2002.

[22] Applicants state that the offer is subject to various conditions (all set forth in Exhibit B–1 to the Application) typical of acquisitions in Europe and the U.S. The conditions include the receipt of acceptances representing at least 90% (or such lesser percentage as E.ON may decide in excess of 50%) in nominal value of the Powergen shares or, in the event the offer is effected through a Scheme of Arrangement, rather than a tender offer, approval at a court-ordered meeting of the Powergen shareholders by a majority in number, representing 75% or more in value present and voting, either in person or by proxy, of the holders of the Powergen shares. In addition, the offer contains standard conditions restricting Powergen and its subsidiaries from issuing additional securities, paying dividends, bonuses or distributions, transferring assets not in the ordinary course of business, changing loan capital, making capital expenditures and other transactions of a long-term, onerous or unusual nature, changing director remuneration, repurchasing shares, changing constitutive documents, instituting bankruptcy and similar proceedings or entering into agreements to effect any of the above transactions, matters or events, subject to certain conditions.

The conditions also contain standard provisions regarding developments material to the Powergen Group, taken as a whole, including adverse changes in the assets, business, financial or trading position or profits of the Powergen Group; legal proceedings having been threatened, announced or instituted by or against or remaining outstanding against any member of the Powergen Group; contingent or other liabilities having arisen; and steps having been taken which are likely to result in the withdrawal, cancellation, termination or modification of any license held by any member of the Powergen Group which is necessary for the proper carrying on of its business.

[23] Applicants state that for U.K. tax purposes, some shareholders of Powergen may prefer to receive a loan note rather than cash from E.ON in return for their Powergen shares. Under U.K. tax law, such shareholders can defer recognition of any capital gains from the sale of their Powergen shares until they redeem the loan notes. In the event the loan notes are used, accepting shareholders of Powergen shares would receive £1 nominal of loan notes for every £1 of cash consideration. The loan notes would be unsecured, and would not exceed in aggregate principal amount issued, $7.3 billion. They have not been, and will not be, registered under the Securities Act of 1933, and will not be offered to U.S. investors. If E.ON elects to make the offer through another member of the E.ON Group, E.ON would guarantee the loan notes. E.ON requests authorization to maintain the loan notes and any associated guarantee in connection with the Acquisition.

[24] Before taking into account future dividends payable to Powergen shareholders, the offer represents a premium of 8.4% over the price of Powergen shares as at the close of business on April 6, 2001 (the last trading day prior to the announcement of the Acquisition); 25.8% over the closing price of Powergen shares on January 16, 2001, the last business day before the announcement of preliminary talks between E.ON and Powergen in relation to the offer) and 35.2% over the average price of Powergen shares over the 6 months ended January 16, 2001.

[25] Applicants state that the German and European utility regulations that affect the E.ON Group apply only to its German and European operating companies and not to the parent holding company, which will register; therefore, there is no conflict between the regulatory scheme under the Act and German or European regulation. Similarly, U.K. utility regulation affecting Powergen (and E.ON following its acquisition of Powergen) would apply only to the U.K. operating companies and not directly to the parent registered holding company. Therefore, there also will be no conflict between the regulatory scheme under the Act and U.K. regulation. As noted previously, in addition to the U.S. Federal and state approvals, the transaction has been reviewed by the European Commission and will be reviewed by the U.K. Office of Gas and Electricity Markets.

business in the context of E.ON's overall group strategy. Although Powergen will cease to own any public-utility companies, Powergen will remain a registered holding company due to its continuing role regarding the LG&E Energy Group.

Powergen will continue to hold an indirect voting equity interest in LG&E Energy through the Powergen Intermediate Holding Companies for a short period of time, not to exceed six months after the Acquisition.[26] This will allow time for E.ON to accomplish a reorganization whereby the ownership of PUSIC, the immediate parent of LG&E Energy, will be transferred to E.ON US Verwaltungs GmbH (''E.ON US''), a wholly owned E.ON subsidiary company. Applicants request authorization to effect the reorganization.

After the Acquisition and the reorganization, E.ON will hold all the outstanding voting stock of LG&E Energy through PUSIC and E.ON U.S. (the ''Intermediate Companies'').[27] PUSIC will remain a registered holding company under the Act and E.ON and E.ON US will register as such. The Powergen Intermediate Holding Companies will cease to own voting securities directly or indirectly in PUSIC or LG&E Energy, although certain arrangements made to finance Powergen's acquisition of LG&E Energy and the operations of LG&E Energy, will remain in place.

Because the Powergen Intermediate Holding Companies will cease to hold direct or indirect voting interests in LG&E Energy, they request that the Commission unconditionally approve their deregistration under section 5(d) of the Act. Applicants further request that the Commission reserve jurisdiction over the proposed deregistration until after the reorganization has been effected and the record is complete in this regard.

Applicants state that maintaining an efficient post-Acquisition structure may require a rapid response to changes in matters such as tax and accounting rules, including by making appropriate revisions after consummation of the Acquisition to add or subtract an intermediate holding company between E.ON and LG&E Energy. They assert that such changes to the ''upper structure'' would not have any material impact on the financial condition or operations of LG&E Energy or its subsidiaries. Applicants request authorization to make such changes after consummation of the Acquisition, subject to the condition that no change (i) will result in the introduction of any third part interests in the upper structure, (ii) will introduce a non-European Union or non-U.S. entity into the upper structure, or (iii) will have any material impact on the financial condition or operations of E.ON or LG&E Energy and its subsidiaries.

Applicants request that, for purposes of the analysis under section 11(b)(2) of the Act, the Commission disregard the Intermediate Companies (PUSIC and E.ON US), neither of which will issue securities to third parties. Applicants assert that these companies are special purpose entities created for the sole purpose of capturing economic efficiencies that might otherwise be lost in a cross-border transaction.

Applicants request that Powergen, E.ON UK and E.ON UK plc also be disregarded for the purposes of the analysis under section 11(b)(2) of the Act. As noted above, all three will be registered holding companies under the Act after the Acquisition. E.ON UK and Powergen will not issue securities to third parties, but will serve merely as financial conduits. E.ON UK plc, however, may issue and sell debt securities, in particular, bonds, to third parties to finance the authorized or permitted activities of the Powergen Group. Bonds issued by E.ON UK plc may be guaranteed by E.ON. Applicants state that financing the Powergen Group through bonds issued by E.ON UK plc is expected to be more cost effective due to tax considerations than financing capital needs through E.ON or another E.ON subsidiary and then lending the funds to E.ON UK plc.

Applicants state that any third party debt issued by E.ON UK plc would be consolidated into E.ON's consolidated financial statements and would count against the financing limits for E.ON's external financing program set forth in the application that E.ON has filed with the Commission in File 70–9985 for approval of its proposed financings (the ''Financing Application''). The debt issued by E.ON UK plc would be reflected in E.ON's consolidated financial statements, and in the Financing Application. E.ON will commit to a minimum 30% equity to total capitalization level. Applicants assert that in effect, especially in the case where such debt is backed by an E.ON guarantee, E.ON UK plc would function as a financing subsidiary for E.ON, and the debt of E.ON UK plc should be treated as E.ON debt for purposes of determining compliance with section 11(b)(2) of the Act. In other words, Applicants assert that E.ON UK plc, together with E.ON UK and Powergen, should be viewed as financing conduits that may be ''looked through'' for purposes of determining compliance with section 11(b)(2).

As discussed in section II.A.3.c., *supra,* Applicants propose that, following the Acquisition, E.ON NA and Fidelia will be integrated under the E.ON U.S. corporate structure. In addition, Fidelia, which holds the cash proceeds of certain divestitures of E.ON's nonutility businesses in the U.S. will continue to hold such funds for use in future U.S. acquisitions, as permitted or authorized by the Commission. Further, Fidelia may lend funds to other companies in the E.ON Group, except as prohibited under the Act.[28] This would avoid repatriating the funds to Germany and exposure to the risks of currency value fluctuations. To effect the restructuring, E.ON would transfer the E.ON NA shares to E.ON U.S., which, in turn, would transfer the shares to PUSIC. For tax reasons, debt of E.ON NA to E.ON may be cancelled, or E.ON may contribute assets to E.ON NA, in connection with the restructuring transactions.

*IV. Financing of the Acquisition*

E.ON proposes to finance the Acquisition with cash on hand, the proceeds of liquidating certain readily marketable assets, funds from E.ON's existing lines of credit or the issuance and sale of long-term or short-term debt securities or bank lines of credit. Powergen, LG&E Energy and its subsidiaries, including LG&E and KU, will not borrow or issue any security, incur any debt or pledge any assets to finance any portion of the purchase price paid by E.ON for Powergen shares.

[26] As a result of Powergen's acquisition of LG&E Energy, Powergen and the Powergen Intermediate Holding Companies registered as public-utility holding companies under Section 5 of the Act. The Powergen Intermediate Holding Companies are Powergen US Holdings Limited and Powergen US Investments, corporations organized under the laws of England and Wales, Powergen Luxembourg sarl and Powergen Luxembourg Holdings sarl, corporations organized under the laws of Luxembourg, and Powergen US Investments Corp., a Delaware corporation (''PUSIC''). PUSIC currently holds all of the outstanding voting securities of LG&E Energy, and will continue to do so after the Acquisition.

[27] Applicants state that this ownership structure is preferable from a tax law perspective because it avoids holding a U.S. asset through another foreign jurisdiction. They state that current German tax regulations with regard to controlled foreign corporations discourage German corporations from holding assets through multi-tier subsidiaries located in multiple jurisdictions.

[28] Applicants' filing in SEC File No. 70–9985 (the ''Financing Application'') describes the proposed financing plan for the E.ON Group, including Fidelia, in greater detail.

*V. EWG/FUCO Financings and Investments*

Applicants seek authorization (i) to retain existing investments in FUCOs [29] and energy-related businesses; (ii) to invest the proceeds from divestitures (including any divestitures occurring since the June 2000 merger of Veba and Viag, as well as future divestitures), which may total approximately $35 billion, in exempt wholesale generator (''EWG'') and FUCO activities without including those investments in E.ON's Aggregate EWG/FUCO Financing Limitation (as defined below);[30] and (iii) to enter into transactions to finance additional investments in EWGs and FUCOs in an amount up to $25 billion.

The authorization requested in (ii), above, would also include authorization for E.ON to issue and sell securities to finance EWG and FUCO investments pending the receipt of divestiture proceeds (''Bridge Loans''); provided that upon the receipt of such proceeds, the Bridge Loans or securities with an equivalent principal amount are retired, redeemed or otherwise paid down such that the aggregate EWG and FUCO investment under the authorization requested in (ii) does not exceed the cash proceeds from divestitures. The $35 billion Bridge Loan authorization, plus the $25 billion additional investment amount referred to in (iii) above, are referred to in the aggregate as the ''Aggregate EWG/FUCO Financing Limitation.''

A. Reinvestment of Proceeds From Divestitures

As discussed previously, E.ON intends to divest significant nonutility assets. E.ON requests authorization to reinvest the proceeds of those divestitures, estimated to be $35 billion in eligible EWG and FUCO assets. Applicants state that eligible FUCO assets will include non-U.S. electric and gas utilities as well as energy-related and other related activities and assets. Because the receipt of divestiture proceeds will not always coincide with the opportunity to invest in additional EWG or FUCO assets, Applicants also request authorization for E.ON to enter into bridge financing arrangements and to make Bridge Loans of up to $35 billion. In this way, attractive investment opportunities can be pursued pending the ultimate receipt of divestiture proceeds. Upon receipt of the divestiture proceeds, E.ON would retire, redeem or otherwise pay down the Bridge Loans or securities with an equivalent principal amount, so that E.ON's aggregate EWG and FUCO investment under the authorization to reinvest divestiture proceeds does not, in fact, exceed the proceeds from the divestitures.

B. Additional Investment in EWGs and FUCOs

In addition to retention of E.ON's existing FUCO and energy-related investments and the reinvestment of the proceeds of divestitures, Applicants request authorization to finance additional EWG/FUCO investments in an aggregate amount of up to $25 billion. These financings may include the issue or sale of a security for purposes of financing the acquisition or operations of an EWG or FUCO, or the guarantee of a security of an EWG or FUCO.[31] Applicants state that E.ON will not issue additional debt securities to finance EWG or FUCO acquisitions if upon original issuance E.ON's senior debt obligations are not rated investment grade by at least two of the major rating agencies (*i.e.*, Standard & Poor's Corporation, Fitch Investor Service and Moody's Investor Service). E.ON, LG&E and KU will also each maintain a capital structure in which common equity comprises at least 30% of consolidated capitalization.

As of December 31, 2000, E.ON had an ''aggregate investment,'' as the term is defined in rule 53(a) under the Act, in EWGs and FUCOs of $6.009 billion.[32] This investment represents 44% of E.ON's *pro forma* consolidated retained earnings of $13.805 billion as of December 31, 2000, as adjusted for the Acquisition and determined in accordance with U.S. GAAP.[33] In addition, the combined LG&E Energy Group and Powergen aggregate investment in EWGs and FUCOs as of December 31, 2000 is $1.048 billion. The combined E.ON, Powergen and LG&E Energy aggregate investment ($7.057 billion) represents approximately 51% of E.ON's *pro forma* consolidated retained earnings.

On a pro forma basis to reflect the Acquisition and the reinvestment of the estimated proceeds of divestitures ($35 billion) in FUCO investments, E.ON's ''aggregate investment'' in EWGs and FUCOs as of December 30, 2000 would be approximately $42.057 billion, or approximately 305% of E.ON's pro forma consolidated retained earnings at December 31, 2000, calculated in accordance with U.S. GAAP. Additional investments in EWGs and FUCOs in an amount up to $25 billion, would result in total aggregate investment of approximately $67.057 billion, or 486% of E.ON's pro forma consolidated retained earnings at December 31, 2000.

*VI. Investments in Portfolio Securities*

E.ON Group companies, particularly E.ON Energie, hold significant investments as reserves against long-term liabilities, specifically, pension and, for E.ON Energie only, nuclear decommissioning obligations. These investments, which currently total approximately Euro 9 billion ($7.9 billion), include publicly traded common stocks of other companies. Large parts of the investments are held through investment funds. Applicants request that the Commission authorize E.ON and its FUCO and nonutility subsidiaries located in Germany to retain these investments under section 9(c)(3) of the Act as being ''in the ordinary course of business'' of a German company. The requested relief would not apply to the Powergen Group or the LG&E Energy Group.

Applicants state that German law does not require, and German companies, including E.ON, do not, in practice, segregate the investments and funds they hold with respect to these kinds of liabilities. To ensure that the relief requested is appropriately matched to a continuing need in the ordinary course of business, E.ON proposes to make equity investments for the purposes of funding future employee benefit and nuclear decommissioning expenditures only if, at the time of investment, the actuarial value of the prospective obligations exceeds the aggregate amount of the investments that will be held by E.ON immediately after the investment has been made. Further, E.ON will not accumulate an affiliate interest in the equity of any company purchased to fund the reserves. During the year 2002, E.ON will divest shares held in companies in which E.ON holds an affiliate interest to reduce E.ON's

[29] For purposes of this discussion, ''FUCOs'' is deemed to include all foreign businesses which qualify for FUCO status but for the fact that the appropriate notice has not yet been provided to the Commission. E.ON states that it intends to provide all such notices to the Commission at the time of the consummation of the Acquisition.

[30] Although the proceeds of divestitures could be invested in EWGs and FUCOs, they would not be limited to such uses and could be used to finance the activities of the E.ON Group generally, as authorized or permitted under the Act.

[31] The specific types of financings are described in the Financing Application.

[32] Currently, E.ON has no EWG investments and its FUCO investment is in E.ON Energie only. E.ON's aggregate investment in E.ON Energie reflects the book value of E.ON's investment, including loans, in E.ON Energie as of December 31, 2000. As of September 30, 2001, E.ON's aggregate investment in E.ON Energie was $6.147 billion.

[33] E.ON's *pro forma* solidated retained earnings would be $13.805 billion as of December 31, 2000. As of September 30, 2001, E.ON's pro forma consolidated retained earnings would be $11.679 billion.

interest below 5%.[34] Furthermore, on a going forward basis, E.ON's additional net investments in its reserves will be limited to 25% common stocks.[35] E.ON's annual report on Form U5S will include a statement reconciling the reserve investments with the related long-term liabilities. The statement will indicate the asset class breakdown of the reserves.

*VII. Intrasystem Provision of Services*

A. LG&E Services and the LG&E Energy Group

In the Powergen Order, the Commission found that LG&E Services, Inc.(''LG&E Services'') met the requirements of section 13(b) of the Act. LG&E Services will remain a first-tier wholly owned subsidiary of LG&E Energy, will become the service company under section 13 of the Act for the E.ON Group upon completion of the Acquisition, and will continue to provide services to the members of the LG&E Energy Group. Except as otherwise authorized, the operation of LG&E Services will conform to the authorization granted in the Powergen Order.

B. Services Provided by Members of the Powergen Group and Members of the E.ON Group

Applicants state that, after the Acquisition, Powergen and other members of the Powergen UK Group (Powergen Group Holdings and all of its direct and indirect subsidiaries) will continue to provide services to the LG&E Energy Group. For example, members of the Powergen UK Group will provide management services in the areas of internal audit, tax and treasury; and consultation regarding engineering, research and development projects and transmission best practices. Applicants also expect that E.ON and other members of the E.ON Group, especially E.ON Energie, will provide services to LG&E Services and other members of the LG&E Energy Group after the Acquisition.[36] Those services would generally be limited to high-level management, administrative and technical services.

Applicants state that E.ON does not intend to render services to its subsidiaries at a charge and will not allocate to the LG&E Energy Group companies, or charge them for, any general overhead costs incurred at the E.ON or Powergen level.[37] Applicants state that, to the extent that costs for services provided by members of the Powergen UK Group or the E.ON Group (other than E.ON and Powergen) can be attributed to a specific member of the LG&E Energy Group, that member will be charged such cost directly. Billing and coordination of services would be performed by LG&E Services, as described below. The costs for the service will be directly assigned, distributed or allocated by activity, project, program, work order or other appropriate basis. The service provider will use appropriate policies and procedures to assure that all costs are identified and attributed to particular projects, programs or work orders for purposes of direct cost allocation. As required by rule 91 under the Act, the costs allocated across the businesses served by any service provider will represent the total true cost of providing the corporate service. The costs considered in the allocation will include: (1) Total payroll and associated costs; (2) materials and consumable costs; (3) building and facilities costs; (4) information systems infrastructure costs; and (5) other departmental costs. Records related to services provided by any service provider to the LG&E Energy Group companies will be made available to the Commission staff for review.

Applicants state that, to the extent that any services cannot be directly attributed to a specific LG&E Energy Group company, members of the LG&E Energy Group will pay a share of the costs of services that benefit them. The portion of the costs attributable to the LG&E Energy Group companies will be determined using measures that reflect the relevant contribution and size of the individual businesses. With respect to costs incurred at the Powergen Group level, allocation of group costs will by done using four measures (revenues, operating profit, employee numbers and net assets) and group costs will be allocated equally across the four measures. Revenues are adjusted to exclude the income resulting from sales of purchased power within the LG&E Energy Group. Powergen will use figures from the latest published accounts to calculate the percentage of revenues, operating profit, employee numbers and net assets on an annualized basis, and these four percentages will be averaged to calculate the group allocation.

Applicants state that LG&E Services will generally act as the gatekeeper or coordinator for services flowing to and from the LG&E Energy Group. Applicants expect that the majority of costs billed by members of the Powergen Group to the LG&E Energy Group will be paid initially by LG&E Services, which will then charge the appropriate service recipient. LG&E Services will allocate the costs of service among the LG&E Energy Group using one of several methods. The method of cost allocation varies based on the department rendering the service. The cost allocation methods used by LG&E Energy Services are described in Exhibit J–1 to the Application.

Applicants state that, except as otherwise authorized by the Commission, all services provided by members of the E.ON Group and/or the Powergen Group to LG&E Services and the other members of the LG&E Energy Group will be billed at cost and in accordance with fair allocation methods, in accordance with section 13 of the Act and the related rules. If a service provider provides services for the benefit of a specific LG&E Energy Group company, the charge applicable to that company will be specifically identified in the invoice. Otherwise, the service provider's charges will be allocated to individual LG&E Energy Group companies through LG&E Services' allocation procedures.

C. Exemptions for Transactions with Nonutility Companies

Each member of the E.ON Group, the Powergen Group and the LG&E Energy Group (including LG&E Services) requests authorization under section 13(b) of the Act to provide services and sell goods to nonutility companies in the LG&E Energy Group, the Powergen Group and the E.ON Group, at fair market prices determined without regard to cost, and requests an exemption under section 13(b) of the Act from the cost standards of rules 90 and 91 as applicable to these transactions, in any case in which the nonutility subsidiary purchasing these goods or services is:

[34] E.ON holds an interest above 5% in a company, which it plans to divest in 2002 by either selling the stock or issuing a bond that would be exchangeable for the stock of the company or cash. Applicants state that the terms of the exchange offer, including when the exchange would be triggered, have not yet been determined.

[35] This limit will be applied over the course of E.ON's fiscal year and will be based on the value of the investments at the time they were made.

[36] Applicants do not expect that significant services or goods would be provided by members of the E.ON Group other than E.ON and E.ON Energie to LG&E Services or other companies in the LG&E Energy Group.

[37] Applicants state that, if in the future E.ON seeks to charge its costs for general administrative services relating to its corporate-wide objectives, policies and activities, including costs of senior management, shareholder services, investor relations, corporate affairs, strategic planning and business development, E.ON will file an application setting forth allocation methods and describing the proposed transactions in further detail.

(1) A FUCO or foreign EWG which derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(2) An EWG which sells electricity at market-based rates which have been approved by the FERC, provided that the purchaser is not a public-utility company in the LG&E Energy Group;

(3) A ''qualifying facility'' (''QF'') within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA''), that sells electricity exclusively (a) at rates negotiated at arms'' length to one or more industrial or commercial customers purchasing the electricity for their own use and not directly for resale, and/or (b) to an electric utility company other than a public utility in the LG&E Energy Group at the purchaser's ''avoided cost'' as determined in accordance with PURPA regulations;

(4) A domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser is not a public-utility company in the LG&E Energy Group; or

(5) A subsidiary engaged in rule 58 activities or any other nonutility subsidiary that (a) is partially owned by a member of the LG&E Energy Group, the Powergen UK Group or the E.ON Group, (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to the non-utility subsidiaries described in clauses (1) through (4) immediately above, or (c) does not derive any part of its income from a public-utility company within the LG&E Energy Group.

*VIII. Reporting*

Applicants state that under German law, E.ON must prepare and publish consolidated financial information at least semi-annually. Applicants propose to provide rule 24 certificates on a semiannual basis, consistent with the frequency of financial reporting required in Germany. The rule 24 certificates will be provided to the Commission within 180 days after the end of E.ON's fiscal year and within 60 days of the end of its second fiscal quarter and will contain paper copies of E.ON's filings of Form 20–F and reports to shareholders. The semiannual reports provided to the Commission in rule 24 filings under this Application will be organized so that all columns showing amounts in Euros in financial statements or tables are accompanied by parallel columns showing U.S. dollar amounts.

Applicants state that they will file Form U5S annually within 180 days of the close of E.ON's fiscal year. In addition, as required by the 1934 Act, and the Securities Act of 1933, as amended, respectively, E.ON will file Form 20–F and reports on Form 6–K containing material announcements as made. To maintain a consistent presentation of financial information, the Applicants propose that the Form U5S filing will contain: (1) U.S. GAAP financial statements for all the LG&E Energy Group companies; and (2) U.S. GAAP financial statements or financial statements in the format required by Form 20–F for (a) E.ON, on a consolidated basis, and (b) any intermediate holding companies. The reporting requirements imposed by the Commission will enable the Commission to oversee the operations of the E.ON companies, including intrasystem transactions. All amounts expressed in Euros shall be converted to U.S. dollars. Form U5S filings will state amounts in U.S. dollars.

E.ON also will report annually, as a supplement to the Form U5S, service transactions among the E.ON system companies. That report will contain the following information:

(1) A narrative description of the services rendered by members of the E.ON Group or the Powergen Group for the LG&E Energy Group, by the members of the LG&E Group for the E.ON Group or the Powergen Group, and by the members of the LG&E Energy Group for each other (other than as reported on Form U–13–60);

(2) Disclosure of the dollar amount of services rendered according to category or department;

(3) Identification of companies rendering services and recipient companies; and

(4) Disclosure of the number of LG&E Energy Group employees engaged in rendering services to other E.ON system companies on an annual basis, stated as an absolute and as a percentage of total employees.

Applicants also request an exemption from rule 26(a)(1) under the Act, regarding the maintenance of financial statements in conformance with Regulation S–X, for any subsidiary of E.ON organized outside the U.S. Applicants state that E.ON will comply with Rule 53(a)(2)(ii), which requires each majority-owned FUCO subsidiary of a registered holding company to maintain its books, records and financial statements in conformity with U.S. GAAP and requires the registered holding company to provide the Commission with access to such books and records. For each non-majority owned FUCO subsidiary, Applicants state that E.ON will endeavor to comply with Rule 53(a)(2)(iii), which requires either U.S. GAAP books, records and financial statements or, upon request, for E.ON to provide a description and quantification of material variations from U.S. GAAP if another comprehensive body of accounting principles is followed.

Applicants also will report annually, as a supplement to the Form U–13–60 filed by LG&E Services, service transactions among E.ON system companies (excepting the LG&E Energy Group) and the LG&E Energy Group. The report will contain the following information:

(1) A narrative description of the services rendered by individual E.ON system companies (excepting the LG&E Energy Group) to the LG&E Energy Group and by the LG&E Energy Group to other E.ON system companies

(2) Disclosure of dollar amount of services rendered according to category or department;

(3) Identification of companies rendering service and recipient companies, including disclosure of the allocation of services costs among the companies of the LG&E Energy Group; and

(4) Disclosure of the number of LG&E Energy Group employees engaged in rendering services to other E.ON system companies on an annual basis, stated as an absolute and as a percentage of total employees.

With regard to its investments in EWGs and FUCOs, E.ON proposes to report the following information in its semiannual rule 24 certificates:

(1) A calculation of the ratio of E.ON's aggregate investment in EWGs and FUCOs to E.ON's average consolidated retained earnings (both as determined in accordance with Rule 53(a));

(2) A statement of aggregate investment as a percentage of the following: total capitalization, net utility plant, total consolidated assets and market value of common equity, all as of the end of that semiannual period;

(3) A statement of E.ON's authorized EWG and FUCO investment limit and the amount of unused investment authority based on the aggregate investment as of the date of the report;

(4) Consolidated capitalization ratios as of the end of that semiannual period;

(5) The market-to-book ratio of E.ON's common stock at the end of that semiannual period;

(6) An analysis of the growth in consolidated retained earnings, which segregates total earnings growth attributable to EWGs and FUCOs from

that attributable to other E.ON subsidiaries; and

(7) A statement of revenues and net income of each of E.ON's EWGs and FUCOs for the twelve months ended as of the end of that semiannual period, with an indication of which EWGs and FUCOs were acquired during the reporting period.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–32074 Filed 12–28–01; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 25324; 813–202]**

## Greenwich Street Employees Fund, L.P., et al.; Notice of Application

December 21, 2001.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (''Act'') exempting applicants from all provisions of the Act and the rules and regulations under the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (except for certain provisions of paragraphs (a), (b), (e), and (h)), and section 36 through 53, and the rules and regulations under those sections.

**SUMMARY OF APPLICATION:** Applicants request an order to exempt certain limited partnerships and other entities (each a ''Partnership'') formed for the benefit of key employees of Citigroup Inc. and its affiliates from certain provisions of the Act. Each Partnership will be an ''employees'' securities company'' within the meaning of section 2(a)(13) of the Act.

*Applicants:* Greenwich Street Employees Fund, LP (''Initial Partnership''); Citigroup Inc.; Citigroup Employee Fund of Funds I, LP; Citigroup Employee Fund of Funds (US–UK) I, LP; Citigroup Employee Fund of Funds (Cayman) I, LP; Citigroup Employee Fund of Funds (DE–UK) I, LP; SSB Capital Partners I, LP; SSB Capital Partners (US–UK) I, LP; SSB Capital Partners (Cayman) I, LP; and SSB Capital Partners (DE–UK) I, LP.

**FILING DATES:** The application was filed on February 10, 1999 and amended on August 18, 1999, October 31, 2000, April 16, 2001 and December 20, 2001.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 15, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 399 Park Avenue, New York, New York 10043.

**FOR FURTHER INFORMATION CONTACT:** John L. Sullivan, Senior Counsel, at (202) 942–0681, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

### Applicants' Representations

1. Citigroup Inc. is a financial holding company whose businesses provide a broad range of financial services. Citigroup Inc. and its affiliates (as defined under rule 12b–2 under the Securities Exchange Act of 1934 (''Exchange Act'')) (''Citigroup'') have organized and will organize Partnerships primarily for the benefit of eligible current and former employees, officers, directors, and persons on retainer of Citigroup (an ''Eligible Employee''). The Partnerships are part of a program designed to create capital building opportunities that are competitive with those at other financial services firms and to facilitate the recruitment of high caliber professionals. Participation in a Partnership is voluntary.

2. A Partnership will be a limited partnership, a limited liability company, business trust or other entity organized under the laws of Delaware or another state. Citigroup also will form Partnerships organized under the laws of jurisdictions outside the United States to create the same investment opportunities for Eligible Employees who are not U.S. residents. The Partnerships will be operated in accordance with their respective limited partnership agreements or other organizational documents (each, a ''Partnership Agreement''). Each Partnership will be formed as an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act and will operate as a closed-end management investment company, which may be diversified or non-diversified.

3. Each Partnership will be managed, operated and controlled by its general partner, managing member or other similar entity (''General Partner''). Each General Partner, with the exception of the Initial General Partner (as defined below), will be a Citigroup entity. The General Partner or another entity will serve as investment adviser (''Investment Adviser'') to a Partnership. The Investment Adviser will be (a) registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''), (b) exempt from Advisers Act registration requirements by virtue of section 203(b)(3) of the Advisers Act, or (c) excluded from the definition of investment adviser under the Advisers Act because it is a bank or a bank holding company (as defined in the Bank Holding Company Act of 1956). Any entity serving as Investment Adviser to any Partnership (other than the Initial Partnership as described below) will be a Citigroup entity.

4. The Initial Partnership is a limited partnership that first offered Interests (as defined below) in Feburary 1999. The Initial Partnership invests concurrently with Greenwich Street Capital Partners II, LP (''Fund II'') and other investors organized or managed by Citigroup or its designees that generally co-invest with Fund II (''Fund II Co-Investors''). Pursuant to their respective limited partnership agreements, the Initial Partnership, Fund II and Fund II Co-Investors must each, to the extent possible, make investments in securities of portfolio companies on a *pari passu* basis with each other on the same terms and at the same times and dispose of such securities at the same time, on the terms and conditions no more favorable than the terms and conditions of any other such disposition by any other such party. Both the Initial Partnership and Fund II are advised by GSCP (NJ), LP (''Initial Investment Adviser''). The Initial Investment Adviser is wholly owned by individuals who are managing members of Greenwich Street Investments II, L.L.C., which is the general partner of the Initial Partnership (''Initial General Partner'') and the

general partner of Fund II. At the time the Initial Partnership was formed, the Initial General Partner was a Citigroup entity. In June 1999, Citigroup restructured its interest in the Initial General Partner as a condition to an order of the Federal Reserve Board prompted by the merger of Citicorp and Travelers Group Inc. The restructuring involved (a) a reduction in the voting interest of The Travelers Insurance Company (''Travelers Insurance'') and certain of its affiliates in the Initial General Partner to 24.9%, (b) Travelers Insurance ceasing to be a managing member of the Initial General Partner, and (c) the management and employees of the Initial Investment Adviser ceasing to be employed by Citigroup. When the restructuring occurred, 42.5% of the Initial Partnership's capital had been invested or committed for investment. Citigroup continues to own a 50% economic interest in the equity of the Initial General Partner.

5. Interests in the Partnerships (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the ''Securities Act''), Regulation D or Regulation S under the Securities Act, and will be sold only to Eligible Employees, and other ''Qualified Participants,'' each as defined below, (collectively, the ''Limited Partners''). Prior to offering Interests to an Eligible Employee or Eligible Family Member (as defined below), the General Partner must reasonably believe that such individual has such knowledge, sophistication and experience in business and financial matters to be capable of evaluating the merits and risks of participating in the Partnership, is able to bear the economic risk of such investment, and is able to afford a complete loss of such investment. Each Eligible Employee will meet the standards of an ''accredited investor'' as defined in rule 501(a)(5) or 501(a)(6) of Regulation D under the Securities Act (an ''Accredited Investor'') or be one of 35 or fewer employees of Citigroup who meets certain other requirements (''Other Investors'').

6. Each Other Investor will be an Eligible Employee who (a) is a ''knowledgeable employee,'' as defined in rule 3c–5 under the Act, of the Partnership (with the Partnership treated as though it were a ''Covered Company'' for purposes of the rule), or (b) has a graduate degree in business, law or accounting, has a minimum of five years of consulting, investment banking, legal or similar business experience, and has a reportable income from all sources in each of the two calendar years immediately preceding the Other Investor's participation in the Partnership of at least $100,000 and has a reasonable expectation of reportable income of at least $140,000 per year in each year in which the Other Investor will be committed to make investments in a Partnership. An Other Investor qualifying under (b) above will not be permitted to invest in any year more than 10% of such person's income from all sources for the immediately preceding year in the aggregate in a Partnership and in all other Partnerships in which that Other Investor has previously invested.

7. A Qualified Participant is an Eligible Employee, Eligible Family Member, Eligible Investment Vehicle, or Citigroup. An ''Eligible Family Member'' is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee, and must be an Accredited Investor. An ''Eligible Investment Vehicle'' is a trust or other investment vehicle established solely for the benefit of an Eligible Employee or Eligible Family Members. An Eligible Investment Vehicle must be either (a) an Accredited Investor or (b) an entity for which an Eligible Employee or Eligible Family Member (each, an ''Eligible Individual'') is a settlor and principal investment decision-maker.[1] Any member of Citigroup that acquires an Interest will be an Accredited Investor.

8. The specific investment objectives and strategies for a particular Partnership will be set forth in a private placement memorandum relating to the Interests offered by the Partnership, and each Qualified Participant will receive a copy of the private placement memorandum before making an investment in the Partnership. The terms of a Partnership will be disclosed to each Eligible Employee at the time the Eligible Employee is invited to participate in the Partnership. Each Partnership will send audited financial statements to the Limited Partners as soon as practicable after the end of its fiscal year. In addition, a report will be sent to each Limited Partner setting forth the information with respect to his or her share of income, gains, losses, credits and other items for federal income tax purposes, resulting from the operation of the Partnership during that year.

9. Interests in a Partnership will be non-transferable except with the express consent of the General Partner. No person will be admitted into a Partnership unless the person is a Qualified Participant. No fee of any kind will be charged in connection with the sale of Interests.

10. The General Partner may have the right, but not the obligation, to repurchase or cancel the Interest of an Eligible Employee who ceases to be an employee, officer, director or current consultant of any member of Citigroup for any reason.

11. A Partnership will not acquire any security issued by a registered investment company if immediately after the acquisition, the Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

12. An Investment Adviser may be paid a management fee for its services to a particular Partnership, which may be determined as a percentage of aggregate commitments. In addition, a General Partner may be entitled to a performance-based fee or ''carried interest.''[2] If the General Partner is registered as an investment adviser under the Advisers Act, any carried interest will be charged only if permitted by rule 205–3 under the Advisers Act. Except for the Initial Partnership, if the General Partner is not registered under the Advisers Act, the carried interest will comply with section 205(b)(3) of the Advisers Act (with the Partnership treated as though it were a business development company solely for the purpose of that section).[3] Certain of the Partnerships may not pay a management fee or a carried interest but will pay a fee for administrative services to a Citigroup entity.

13. A Partnership will not borrow from any person if the borrowing would

[1] A limited number of Eligible Employees who were Accredited Investors invested in the Initial Partnership through estate planning vehicles that may or may not have been Accredited Investors. There were significantly fewer than 35 such vehicles investing in the Initial Partnership, all of which were established for the exclusive benefit of Eligible Individuals.

[2] A ''carried interest'' is an allocation to the General Partner based on the net gains in addition to the amount allocable to the General Partner that is in proportion to its capital contributions.

[3] The management fee and carried interest payable to the Initial Investment Adviser and Initial General Partner, respectively, by the Limited Partners in the Initial Partnership are on the same terms in all material respects as the management fee and carried interest payable to the investment adviser and general partner, respectively, of Fund II, as negotiated by Citigroup for its own account and by other institutional investors. In calculating the carried interest payable to the Initial General Partner, unrealized capital depreciation is taken into account as periodically determined by the Initial General Partner in its discretion. The Partnership Agreement for the Initial Partnership Agreement contains a ''clawback'' provision that requires the Initial General Partner to return to a Limited Partner any amount retained by the Initial General Partner and attributable to the Limited Partner that is in excess of 20% of distributions payable to that Limited Partner.

cause any person not named in section 2(a)(13) of the Act to own securities of the Partnership (other than short-term paper). If Citigroup makes loans to any Partnership, the lender will be entitled to receive interest at a rate that is permissible under applicable banking or tax regulations, provided that the rate will be no less favorable to the borrower than the rate obtainable on an arm's length basis. Any indebtedness of the Partnership will be the debt of the Partnership and without recourse to the Limited Partners.

14. Eligible Employees may be able to defer compensation under a deferred compensation plan established in connection with the Partnerships and receive a return on such deferred compensation determined by reference to the performance of a Partnership. The deferred compensation plans and/or an Eligible Employee's interest in such plans: (a) Will be subject to the applicable terms and conditions of the application;[4] (b) will only be offered to Eligible Employees who are current employees, officers, directors, or persons on retainer of Citigroup; (c) will have restrictions on transferability, including prohibitions on assignment or transfer except in the event of the Eligible Employee's death or as otherwise required by law; and (d) will provide information to participants equivalent to that provided to investors and prospective investors in the corresponding Partnership, including, without limitation, disclosure documents and audited financial information.

**Applicants' Legal Analysis**

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under section 6(b) and 6(e) of the Act exempting the Partnerships from all provisions of the Act and the rules and regulations under the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53 of the Act, and the rules and regulations under those sections.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit: (a) A Citigroup entity or a Third Party Fund (as defined below), or any affiliated person of such entity or Third Party Fund, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by such Partnership; (b) a Partnership to invest in or engage in any transaction with any entity, acting as principal (i) in which the Partnership, any company controlled by the Partnership, or any Citigroup entity or Third Party Fund has invested or will invest or (ii) with which the Partnership, any company controlled by the Partnership, or any Citigroup entity or Third Party Fund is or will otherwise become affiliated; and (c) a Third Party Investor (as defined below), acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by such Partnership. The term ''Third Party Fund'' refers to an investment fund or separate account that is organized for the benefit of investors who are not affiliated with Citigroup over which a Citigroup entity will exercise investment discretion. The term ''Third Party Investor'' refers to any person or entity that is not a Citigroup entity or affiliated with Citigroup and is a partner or other investor in a Third Party Fund.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and the purposes of the Partnerships. Applicants state that the Limited Partners in each Partnership will be informed of the possible extent of the Partnership's dealings with Citigroup and of the potential conflicts of interest that may exist. Applicants also assert that the community of interest among the Limited Partners and Citigroup will serve to reduce any risk of abuse in transactions involving a Partnership and Citigroup or the respective affiliates of Citigroup. With respect to the Initial Partnership, applicants state that a sufficient community of interest exists between the Limited Partners of that Partnership and Citigroup, despite the fact that the Initial General Partner and Initial Investment Adviser are no longer Citigroup entities. The Initial Partnership operates according to terms that Citigroup negotiated with the Initial General Partner when the Initial General Partner was still a Citigroup entity. A significant amount of the Initial Partnership's committed capital was invested by the Initial General Partner while it was still a Citigroup entity, and all of the Partnership's investments are made in lockstep with Fund II, in which Citigroup is the largest investor.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from participating in any joint enterprise, or other joint arrangement, with the company, unless approved by the Commission. Applicants request relief to permit affiliated persons of each Partnership, or affiliated persons of such persons, to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the Partnership or an company controlled by the Partnership is a participant.

6. Applicants submit that it is likely that suitable investments will be brought to the attention of a Partnership because of its affiliation with Citigroup or Citigroup's large capital resources and its experience in structuring complex transactions. Applicants also submit that the types of investment

[4] For purposes of the application, a Partnership will be deemed to be formed with respect to each deferred compensation plan and each reference to ''Partnership,'' ''capital contribution,'' ''General Partner,'' ''Limited Partner,'' and ''Interest'' in the application will be deemed to refer to the deferred compensation plan, the notional capital contribution to the deferred compensation plan, Citigroup, a participant of the deferred compensation plan, and participation rights in the deferred compensation plan, respectively.

opportunities considered by a Partnership often require each investor to make funds available in an amount that may be substantially greater than what a Partnership may make available on its own. Applicants contend that, as a result, the only way in which a Partnership may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicants note that each Partnership will be primarily organized for the benefit of Eligible Employees as an incentive for them to remain with Citigroup and for the generation and maintenance of goodwill. Applicants believe that, if co-investments with Citigroup are prohibited, the appeal of the Partnerships would be significantly diminished. Applicants assert that Eligible Employees wish to participate in co-investment opportunities because they believe that (a) the resources of Citigroup enable it to analyze investment opportunities to an extent that individual employees would not be able to duplicate, (b) investments made by Citigroup will not be generally available to investors even of the financial status of the Eligible Employees, and (c) Eligible Employees will be able to pool their investment resources, thus achieving greater diversification of their individual investment portfolios.

7. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. Applicants state that the concern that permitting co-investments by Citigroup and a Partnership might lead to less advantageous treatment of the Partnership should be mitigated by the fact that Citigroup will be acutely concerned with its relationship with the investors in the Partnership and the fact that senior officers and directors of Citigroup entities will be investing in the Partnership. In addition, applicants assert that strict compliance with section 17(d) would cause the Partnership to forego investment opportunities simply because a Limited Partner, the General Partner or any other affiliated person of the Partnership (or any affiliate of the affiliated person) made a similar investment.

8. Co-investments with Third Party Funds, or by a Citigroup entity pursuant to a contractual obligation to a Third Party Fund, will not be subject to condition 3 below. Applicants note that it is common for a Third Party Fund to require that Citigroup invest its own capital in Third Party Fund investments and that Citigroup investments be subject to substantially the same terms as those applicable to the Third Party Fund. Applicants believe it is important that the interests of the Third Party Fund take priority over the interests of the Partnerships and that the Third Party Fund not be burdened or otherwise affected by activities of the Partnership. In addition, applicants assert that the relationship of a Partnership to a Third Party Fund is fundamentally different from a Partnership's relationship to Citigroup. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by Citigroup in the employer/employee context, whereas the same concerns are not present with respect to the Partnerships *vis-à-vis* a Third Party Fund.

9. Section 17(e) of the Act and rule 17e–1 under the Act limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit a Citigroup entity (including the General Partner) acting as agent or broker, to receive placement fees, advisory fees or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that the fees or other compensation are deemed ''usual and customary.'' Applicants state that for the purposes of the application, fees or other compensation that are charged or received by a Citigroup entity will be deemed ''usual and customary'' only if (a) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds, (b) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds, and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and unaffiliated third parties, including Third Party Funds. Applicants assert that, because Citigroup does not wish to appear to be favoring the Partnerships, compliance with section 17(e) would prevent a Partnership from participating in transactions where the Partnership is being charged lower fees than unaffiliated third parties. Applicants assert that the fees or other compensation paid by a Partnership to a Citigroup entity will be the same as those negotiated at arm's length with unaffiliated third parties.

10. Rule 17e–1(b) requires that a majority of directors who are not ''interested persons'' (as defined by section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Rule 17e–1(c) requires that a majority of the directors not be interested persons, that those directors select and nominate other disinterested directors and that any person who acts as legal counsel for the disinterested directors be an independent legal counsel. Applicants request an exemption from rule 17e–1 to the extent necessary to permit each Partnership to comply with the rule without having a majority of the directors of the General Partner who are not interested persons take actions and make determinations as set forth in paragraph (b) of the rule and without having to satisfy the standards set forth in paragraph (c) of the rule. Applicants state that because all of the directors of a General Partner will be affiliated persons, without the relief requested, a Partnership could not comply with rule 17e–1. Applicants state that each Partnership will comply with rule 17e–1(b) by having a majority of the board of directors of the General Partner take actions and make approvals as set forth in rule 17e–1. Applicants state that each Partnership will otherwise comply with rule 17e–1.

11. Section 17(f) of the Act provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with Commission rules. Rule 17f–1 under the Act specifies the requirements that must be satisfied when the custodian is a member of a national securities exchange. Rule 17f–2 under the Act specifies the requirements that must be satisfied for a registered management investment company to act as a custodian of its own investments.

Applicants request an exemption from section 17(f) and subsections (a), (b) (to the extent such subsection refers to contractual requirements) (c) and (d) of rule 17f–1 to the extent necessary to permit a Citigroup entity to act as custodian for a Partnership without a written contract. Additionally, applicants request an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicants believe that, because of the community of interest between a Partnership and Citigroup, compliance with these requirements would be unnecessarily burdensome and expensive. Applicants will otherwise comply with the provisions of rule 17f–1.

Applicants also request an exemption from rule 17f–2 to permit the following exceptions from the requirements of rule 17f–2: (a) A Partnership's investments may be kept in the locked files of the General Partner; (b) for purposes of paragraph (d) of the rule, (i) employees of the General Partner will be deemed to be employees of the Partnerships, (ii) officers or managers of the General Partner of a Partnership will be deemed to be officers of the Partnership and (iii) the General Partner of a Partnership or its board of directors will be deemed to be the board of directors of the Partnership and (c) in place of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of the General Partner. Applicants expect that many of the Partnerships' investments will be evidenced only by partnership agreements, participation agreements or similar documents, rather than by negotiable certificates that could be misappropriated. Applicants assert that these instruments are most suitably kept in the files of the General Partner, where they can be referred to as necessary.

12. Section 17(g) of the Act and rule 17g–1 under the Act generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. The rule also requires that a majority of the directors not be interested persons, that those directors select and nominate other disinterested directors and that any person who acts as legal counsel for the disinterested directors be an independent legal counsel. Applicants request exemptive relief to permit the General Partner's board of directors, who may be deemed interested persons, to take actions and make determinations as set forth in the rule. Applicants state that, because all directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief. Specifically, each Partnership will comply with rule 17g–1 by having a majority of the General Partner's directors take actions and make determinations as are set forth in rule 17g–1. Applicants also state that each Partnership will otherwise comply with rule 17g–1.

13. Section 17(j) of the Act and paragraph (b) of rule 17j–1 under the Act make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicant requests an exemption from the provisions of rule 17j–1, except for the antifraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Partnerships.

14. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e) of the Act, and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Limited Partners. Applicants request exemptive relief to the extent necessary to permit each Partnership to report annually to its Limited Partners. Applicants also request an exemption from section 30(h) of the Act to the extent necessary to exempt the General Partner of each Partnership, members of the General Partner or any board of managers or directors or committee of Citigroup employees to whom the General Partner may delegate its functions, and any other persons who may be deemed to be members of an advisory board of a Partnership, from filing Forms 3, 4, and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in the Partnership. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

**Applicants' Conditions**

1. Each proposed transaction involving a Partnership otherwise prohibited by section 17(a) or section 17(d) of the Act and rule 17d–1 under the Act to which a Partnership is a party (the ''Section 17 Transactions'') will be effected only if the General Partner determines that (a) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Limited Partners of the Partnership and do not involve overreaching of the Partnership or its Limited Partners on the part of any person concerned and (b) the transaction is consistent with the interests of the Limited Partners, the Partnership's organizational documents and the Partnership's reports to its Limited Partners. In addition, the General Partner of the Partnership will record and preserve a description of all Section 17 Transactions, the General Partner's findings, the information or materials upon which the findings are based, and the basis therefore. All such records will be maintained for the life of the Partnership and at least two years thereafter and will be subject to examination by the Commission and its staff.[5] With respect to the Initial Partnership, the findings required by this condition will be made by Citigroup or a designated senior officer(s) of Citigroup. The records relating to these findings will be prepared and preserved by Citigroup in accordance with this condition and will be subject to examination by the Commission and its staff.

2. In connection with the Section 17 Transactions, the General Partner of each Partnership will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnership or any affiliated person of such person, promoter or principal underwriter.

3. The General Partner of each Partnership will not invest the funds of the Partnership in any investment in which an ''Affiliated Co-Investor'' (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, and where the investment transaction involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and an Affiliated Co-Investor are participants, unless any such Affiliated Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with the Affiliated Co-Investor. The term ''Affiliated Co-Investor'' with respect to any Partnership means any person who is (a)

[5] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

an ''affiliated person'' (as such term is defined in the Act) of the Partnership (other than a Third Party Fund), (b) Citigroup, (c) an officer or director of Citigroup or (d) an entity (other than a Third Party Fund) in which the General Partner acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by an Affiliated Co-Investor (a) to its direct or indirect wholly owned subsidiary, to any company (a ''Parent'') of which the Affiliated Co-Investor is a direct or indirect wholly owned subsidiary, or to a direct or indirect wholly owned subsidiary of its Parent, (b) to immediate family members of the Affiliated Co-Investor or a trust or other investment vehicle established for any Affiliated Co-Investor or any such family member or (c) when the investment comprises securities that are (i) listed on a national securities exchange registered under section 6 of the Exchange Act, (ii) national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder, (iii) government securities as defined in section 2(a)(16) of the Act or other money market instruments or (iv) listed or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and its General Partner will maintain and preserve, for the life of the Partnership and at least two years thereafter, such accounts, books and other documents constituting the record forming the basis for the audited financial statements that are to be provided to the Limited Partners in the Partnership, and each annual report of the Partnership required to be sent to the Limited Partners, and agree that all such records will be subject to examination by the Commission and its staff.[6]

5. The General Partner of each Partnership will send to each Limited Partner having an interest in any capital account of the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner will make or cause to be made a valuation of all of the assets of the Partnership as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, as soon as practicable after the end of each fiscal year of the Partnership, the General Partner will send a report to each person who was a Limited Partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Limited Partner of his, her or its federal and state income tax returns and a report of the investment activities of the Partnership during that fiscal year.

6. Whenever a Partnership makes a purchase from or sale to an entity affiliated with the Partnership by reason of a 5% or more investment in the entity by a Citigroup director, officer or employee, such individual will not participate in the General Partner's determination of whether or not to effect such purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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[6] Each Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

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## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 25325; 812–12288]**

## One Fund, Inc., Ohio National Fund, Inc., Dow Target Variable Fund LLC, and Ohio National Investments, Inc.; Notice of Application

December 21, 2001.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

**SUMMARY OF APPLICATION:** Applicants, ONE Fund, Inc. (''ONE Fund'') (each a ''Fund'' and, collectively, the ''Funds''), and Ohio National Investments, Inc. (the ''Adviser''), request an order that would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

**FILING DATES:** The application was filed on September 29, 2000, and amended on December 14, 2001.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 15, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, One Financial Way, Montgomery, Ohio 45242.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Mary Kay Frech, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

### Applicants' Representations

1. ONE Fund and ON Fund are Maryland corporations registered under the Act as open-end management investment companies. ON Fund offers its shares only to separate accounts of The Ohio National Life Insurance Company (''ONLI'') and Ohio National Life Assurance Corporation (''ONLAC''), as the underlying investments for variable annuities issued by ONLI and variable life insurance contracts issued by ONLAC. Dow Fund is an Ohio limited liability company registered under the act as an open-end management investment company. Dow Fund presently sells its interests only to separate accounts of ONLI as a funding option to support certain benefits under variable annuity contracts issued by ONLI. Each Fund is comprised of multiple series (''Portfolios''), each with its own investment objectives and policies.[1]

[1] Applicants also request relief with respect to all registered open-end investment companies and

2. The Adviser, an Ohio corporation, serves as investment adviser to each of the Portfolios, and is registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Adviser is a wholly-owned subsidiary of ONLI.

3. The Adviser serves as investment adviser to the Portfolios pursuant to investment advisory agreements between the Adviser and the Funds that were approved by each Fund's board of directors (''Board''), including a majority of the Directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Fund or the Adviser (''Independent Directors''), and by the shareholders of each Fund (the ''Investment Advisory Agreements''). Under the terms of the Investment Advisory Agreements, the Adviser administers the business and affairs of the Funds. The Adviser has overall general supervisory responsibility for the investment program of the Portfolios. The Adviser also selects, contracts with, and compensates subadvisers (''Managers'') to manage the investment and re-investment of the assets of the Portfolios. Each Manager is an investment adviser registered under the Advisers Act, or exempt from registration under the Advisers Act, and performs services pursuant to a written agreement with the Adviser (''Portfolio Management Agreement''). As compensation for its services, the Adviser receives a fee from the Funds computed separately for each of the Portfolios. Managers' fees are paid by the Adviser out of these fees from the Portfolios.

4. The Adviser selects Managers based on the continuing quantitative and qualitative evaluation of their skills and proven abilities in managing assets pursuant to a specific investment style. The Adviser monitors the compliance of Managers with the investment objectives and related policies of each Portfolio and reviews the performance of each Manager in order to assure continuing quality of performance. The Adviser may recommend to the Board reallocation of Portfolio assets among Managers, if necessary, or recommend that the Fund employ or terminate particular Managers, to the extent the Adviser deems appropriate to achieve the overall objectives of a particular Portfolio.

5. Applicants request relief to permit the Adviser subject to the oversight of the Board to enter into and materially amend Portfolio Management Agreements without shareholder approval. The requested relief will not extend to a Manager that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Fund or the Adviser, other than by reason of serving as a Manager to one or more of the Portfolios (an ''Affiliated Manager''.)

**Applicants' Legal Analysis**

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transactions or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f–2 under the Act to permit them to enter into and materially amend Portfolio Management Agreements without shareholder approval.

3. Applicants state that investment companies such as the Funds that use an adviser/subadviser structure divide responsibility for general management and investment advice between the Adviser and one or more Managers. Applicants assert that shareholders rely on the Adviser to select and monitor Managers best suited to achieve a Portfolio's investment objectives. Applicants content that from the perspective of the investor, the role of the Managers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of Portfolio Management Agreements would impose expenses and unnecessary delays on the Portfolios, and may preclude the Adviser from promptly acting in a manner considered advisable by the Board. Applicants note that the Investment Advisory Agreements will remain fully subject to the requirements of section 15(a) of the Act and rule 18f–2 under the Act, including the requirements for shareholder approval.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. No Portfolio will enter into a Portfolio Management Agreement with an Affiliated Manager without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the Portfolio (or, if the Portfolio serves as an investment medium for any sub-account of a registered separate account, pursuant to voting instructions by the unitholders of the sub-account.)

2. At all times, a majority of the Board will be Independent Directors, and the nomination of new or additional Independent Directors will be at the discretion of the then existing Independent Directors.

3. When a Manager change is proposed for a Portfolio with an Affiliated Manager, the Board, including a majority of the Independent Directors, will make a separate finding, reflected in the Fund's Board minutes, that the change is in the best interests of the Portfolio and its shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Portfolio and the unitholders of any sub-account) and that the change does not involve a conflict of interests from which the Adviser or Affiliated Manager derives an inappropriate advantage.

4. Before a Portfolio may rely on the order, the operation of the Portfolio in the manner described in the application will be approved by a majority of the Portfolio's outstanding voting securities (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account), as defined in the Act, or, in the case of a Portfolio or Future Fund whose public shareholders (or variable contract owners through a separate account) purchased shares on the basis of a prospectus(es) containing the disclosure contemplated by Condition 6 below, by the sole initial shareholder(s) before the shares of such Portfolio or Future Fund are offered to the public (or the variable contract owners through a separate account.)

5. The Adviser will provide general management services to the Funds and their Portfolios, including overall

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their series that in the future are advised by the Adviser or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Adviser that are managed in a manner consistent with the application, and comply with the terms and conditions in the application (''Future Funds''). All registered open-end management investment companies that currently intend to rely on the requested order are named as applicants. If the name of any Portfolio contains the name of a manager, as defined below, the Manager's name will be preceded by the name of the Adviser.

supervisory responsibility for the general management and investment of each Portfolio's securities portfolio, and subject to review and approval by the Board, will (a) set the Portfolio's overall investment strategies; (b) evaluate, select, and recommend Managers to manage all or part of a Portfolios assets; (c) when appropriate, allocate and reallocate a Portfolio's assets among multiple Managers; (d) monitor and evaluate the performance of Managers; and (e) implement procedures reasonably designed to ensure that the Managers comply with the relevant Portfolio's investment objectives, policies, and restrictions.

6. Each Portfolio relying on the requested relief will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, any such Portfolio will hold itself out as employing the Adviser/Manager structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility to oversee the Managers and recommend their hiring, termination and replacement.

7. No Director or officer of the Funds or officer or director of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that director or officer) any interest in a Manager except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Manager or an entity that controls, is controlled by or is under common control with a Manager.

8. Within 90 days of the hiring of any new Manager, the Adviser will furnish shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, the Adviser will furnish the unitholders of the sub-account) with respect to the appropriate Portfolio all information about the new Manager that would be included in a proxy statement. Such information will include any changes caused by an addition of a new Manager. To meet this condition, the Adviser will provide shareholders (or, if the Portfolio serves as a funding medium for any sub-account) with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–32076 Filed 12–28–01; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45176; File No. SR–Amex–2001–105]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC, Relating to a Six-Month Extension of Automatic Execution for Exchange Traded Funds

December 20, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The proposed rule change has been filed by the Amex as a ''non-controversial'' rule change under rule 19b–4(f)(6)[3] under the Act. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex seeks a six-month extension of Amex Rule 128A to continue its pilot program for the automatic execution of orders for Exchange Traded Funds (''ETFs''). The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

On June 19, 2001, the Commission approved the Exchange's proposal, adopted as Amex Rule 128A, to permit the automatic execution of orders for Exchange Traded Funds (''ETFs'') on a six-month pilot program basis.[4] The Exchange now seeks to extend the pilot program for another six months.

Since 1986, the Exchange has had an automatic order execution feature (''Auto-Ex'') for eligible orders in listed options. The Chicago Board Options Exchange, Philadelphia Stock Exchange, and Pacific Exchange established similar automatic option order execution features at about the same time as the Amex, and the newest options exchange, the International Securities Exchange, also features automatic order execution. Auto-Ex, accordingly, has been a standard feature of the options markets for a number of years.

In 1993, the Amex commenced trading Standard and Poor's Depositary Receipts® (''SPDRs®''), the first ETF to be listed and traded on the Exchange. ETFs are individual securities that represent a fractional, undivided interest in a portfolio of securities. Currently, approximately 100 ETFs are listed on the Amex. Like an option, an ETF is a derivative security, and, according to the Amex, its price is a function of the value of the portfolio of securities underlying the ETF. Thus, as is the case with options, the Exchange asserts that it is not the price discovery market for ETFs, and that the price discovery market is the market or markets where the underlying securities trade.

The Exchange is now proposing to extend its current Auto-Ex technology to ETFs listed under Amex Rules 1002, 1002A, and 1202 for an additional six months. The Amex represents that this will provide investors that send eligible orders to the Exchange with faster executions than they otherwise would receive. The Exchange believes that many investors desire rapid executions in trading securities that are priced derivative since the value of the underlying instruments may fluctuate during order processing. The Amex,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 44449 (June 19, 2001), 66FR 33724 (June 25, 2001)(''June Release''), approving File No. SR–Amex–2001–29.

moreover, will continue under the pilot extension to incorporate a price improvement algorithm into Auto-Ex for ETFs, and thus to provide investors with better execution prices on their orders. The price improvement algorithm works in the following manner:

When the Amex establishes the National Best Bid or Offer (''NBBO''),[5] Auto-Ex is programmed to execute eligible incoming ETF orders at the Amex Published Quote (''APQ'') plus a programmable number of trading increments with respect to the Amex bid, and less a programmable number of trading increments in the case of the Amex offer. For example, if the APQ were 90.10 to 90.20, and the APQ constituted the NBBO, incoming sell orders might be automatically executed at 90.12 (the Amex bid plus two ticks) and incoming buy orders might be executed at 90.18 (the Amex offer less two ticks).

If the Amex does not establish the NBBO, Auto-Ex is programmed to execute eligible incoming ETF orders at or better than the NBBO up to a specified number of trading increments relative to the APQ.[6] Auto-Ex executes an eligible order at the improved price relative to the APQ unless such execution would result in a trade-through with respect to the price of an away market that is a participant in the Intermarket Trading System (''ITS''). If a trade-through would result, the order is routed to the specialist for electronic processing through the Amex Point of Sale (''POS'') Book.[7]

For example, assume that Auto-Ex is programmed to execute the order at the Amex bid plus two ticks. If the Amex bid were 90, and an away ITS market were bidding 90.01, an incoming sell order would be automatically executed on the Amex at 90.02. Continuing with this example, if the away market were bidding 90.02, an incoming sell order would be automatically executed on the Amex at 90.02 (matching the away market). If the away market were bidding 90.03, the incoming sell order would not be automatically executed. Instead, it would be routed to the specialist for electronic processing through the Amex POS Book.

The amount of price improvement that the system provides—both when the Amex establishes the NBBO and when it does not—is determined by the Auto-Ex Enhancements Committee (''Committee'') upon the request of a specialist, and may differ among ETFs. The Committee consists of the Exchange's four Floor Governors and the Chairmen (or their designees) of the Specialists Association, Options Market Makers Association and the Floor Brokers Association, respectively. The Exchange anticipates that the amount of price improvement will vary among securities based upon such factors as the width of the spread, the volatility of the basket of securities underlying the ETF, and liquidity of available hedging vehicles. The amount of price improvements may be adjusted intra-day by the Committee.

As detailed in Amex Rule 128A, Auto-Ex for ETFs with price improvement is unavailable when the spread is at a specified minimum and maximum variation, which may be adjusted security to security. The Committee will determine, upon the request of a specialist, the minimum and maximum spreads at which Auto-Ex is unavailable. As further provided in the rule, Auto-Ex is also unavailable with respect to incoming sell orders when the Amex bid is for 100 shares, and similarly unavailable with respect to incoming buy orders when the Amex offer is for 100 shares.

Orders that are otherwise Auto-Ex eligible orders are also routed to the specialist, and not automatically executed, in situations where the specialist in conjunction with a Floor Governor or two Floor Officials determine that quotes are not reliable and the Exchange is experiencing communications or systems problems, ''fast markets,'' or delays in the dissemination of quotes. Members and member organizations are notified when the Exchange has determined that quotes are not reliable prior to disengaging Auto-Ex.

Specialists and Registered Options Traders (''ROTS'') that sign onto the system are automatically allocated the contra side of Auto-Ex trades for ETFs. Due to the automatic price improvement feature, the specialist and ROTs that sign onto Auto-Ex for ETFs are deemed to be on parity for purposes of allocating the contra side of ETF Auto-Ex trades. Amex Rule 128A incorporates the following methodology for the allocation of the contra side to Auto-Ex ETF trades:

| Number of ROTs signed on to Auto-Ex in a crowd | Approximate number of trades allocated to the specialist throughout the day (''target ratio'') (percent) | Approximate number of trades allocated to ROTs signed on to Auto-Ex throughout the day (''target ratio'') (percent) |
|---|---|---|
| 1 | 60 | 40 |
| 2–4 | 40 | 60 |
| 5–7 | 30 | 70 |
| 8–15 | 25 | 75 |
| 16 or more | 20 | 80 |

At the start of each trading day, the sequence in which trades are to be allocated to the specialist and ROTs signed onto Auto-Ex is randomly determined. Auto-Ex trades then are automatically allocated in sequence on a rotating basis to the specialist and to the ROTs that have signed onto the system so that the specialist and the crowd achieve their ''target ratios'' over the course of a trading session. If an Auto-Ex eligible order is greater than 100 shares, Auto-Ex divides the trade into lots of 100 shares each. Each lot is considered a separate trade for purposes of determining target ratios and allocating trades within Auto-Ex.

Round lot orders delivered to the post electronically for 2,000 shares or less are eligible for Auto-Ex for ETFs. Orders for an account in which a market maker in ETFs registered as such on another market has an interest are ineligible for Auto-Ex for ETFs. If orders for such market makers were eligible for Auto-Ex with price improvements, the Exchange represents, Amex specialists and ROTs would be unable to make markets with the proposed liquidity for other investors. (Orders fro Amex Registered Trade are ineligible for Auto-Ex for ETFs pursuant to Commentaries .04 and .05 to Rule 111 and Amex Rule 950(c).)

Amex Rule 128A also stipulates that Auto-Ex eligible orders for any account in which the same person is directly or indirectly interested may be entered only at intervals of 30 seconds or more between the entry of each such order in an ETF. The Exchange indicates that Amex specialists and ROTs are willing to provide Auto-Ex with price improvement for orders of a certain size. If persons were allowed to enter more than one Auto-Ex eligible order for an account in which they had a direct or indirect interest at intervals of less than

[5] The term ''establish'' as used in this context of Amex Rule 128A means that the APQ is currently at the NBBO, regardless of whether or not the Amex was the first exchange to be at that price. *See* June Release.

[6] The number of trading increments designated for price improvement when the Amex establishes the NBBO may be different than the number of increments designated for price improvement when the Amex does not establish the NBBO. *Id.*

[7] Once an order that is Auto-Ex eligible is sent to the Exchange, the person that initiated the order has no control over its execution. This is the case regardless of whether the order is executed by Auto-Ex or is executed by the specialist because Auto-Ex is unavailable. If the order is routed to the specialist for handling because Auto-Ex is unavailable, the specialist does not know if the order is for the account of a broker-dealer or for the account of a customer. This information is in the Exchange's order processing system and is unavailable to the specialist.

30 seconds, according to the Exchange, Amex specialists and ROTs would be unable to make markets with the proposed liquidity for all investors. Under Rule 128A, members and member organizations are responsible for establishing procedures to prevent orders for any account in which the same person is directly or indirectly interested from being entered at intervals of less than 30 seconds with respect to an ETF.

The specialist may request the Exchange to increase the maximum size of Auto-Ex eligible orders. Under Amex Rule 128A, such requests are reviewed by the Committee, which approves, disapproves, or conditionally approves such requests. The rule directs the Committee to balance the interests of investors, the specialist, ROTs in the crowd, and the Exchange in determining whether to grant a request to increase the size of Auto-Ex eligible orders.

The Committee also may consider requests from the specialist or ROTs to reduce the size of Auto-Ex eligible orders, balancing the same interests that it would consider in reviewing a request to increase the size of Auto-Ex eligible orders. The Committee is not permitted, however, to reduce the size of Auto-Ex eligible orders below 2,000 shares.

In addition, under Rule 128A the Committee may delegate its authority to one or more Floor Governors. The rule provides, however, that the Committee must meet promptly to review a Floor Governor's decision in the event that a Floor Governor acts pursuant to delegated authority.

Amex Rule 128A further provides that in the event of system problems or unusual market conditions, a Floor Governor is permitted to reduce the size of Auto-Ex eligible orders below 2,000 shares or increase the size of Auto-Ex eligible orders up to 5,000 shares. Any such change is temporary and lasts only until the end of the unusual market condition or the correction of the system problem. Members and member organizations will be notified when the size of Auto-Ex eligible orders is adjusted due to the system problems or unusual market conditions.

Rule 128A also provides that the Chairman and Vice Chairman of the Exchange, acting jointly, determine which ETFs are eligible for Auto-Ex.

2. *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) of the Act in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engage in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The proposed rule change will allow the Auto-Ex for ETFs pilot program to continue for an additional six months. The proposal also facilitates the comparison and settlement of trades since Auto-Ex transactions result in ''locked-in'' trades. Auto-Ex for ETFs, moreover, automatically provides investors with price improvement on their orders.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

That Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal, if fact, will enhance competition among markets and market makers and thereby benefit investors by allowing the Exchange to continue to provide Auto-Ex for ETFs with price improvement.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, the Amex provided the Commission with notice of its intent to file the proposed rule change within a time designated by the Commission.[8] The proposed rule change has therefore become effective pursuant to section 19(b)(3)(A) of the Act [9] and rule 19b–4(f)(6) thereunder. [10]

The Amex has requested that the Commission waive the usual pre-operative waiting period. The Commission believes the pilot program provides beneficial services to investors, and finds it consistent with the protection of investors and the public interest to accelerate the operative date so that the pilot can continue uninterrupted and those benefits do not lapse. Thus, the Commission designates December 20, 2001, as the operative date of the proposed rule change. [11] The pilot extension will expire June 19, 2002.

At any time within 60 days of the filing of this proposal rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protecton of investors, or otherwise in furtherance of the purposes of the Act. [12]

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether it 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 filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2001–105, and should be submitted by January 22, 2002.

[8] The Commission has granted Amex's request to designate a time period shorter than five days prior to filing for notice of its intent to file.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–32082 Filed 12–28–01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45180; File No. SR–Amex–2001–65]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Implementation of Quick Trade

December 20, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 22, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 19, 2001, and December 4, 2001, respectively, the Amex filed Amendment Nos. 1 and 2 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to implement Quick Trade, an enhancement to the Amex Order File and Amex Options Display Book.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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

Currently, for orders executed through the specialist's book (known as the Amex Order Display Book or AODB) in which registered options traders are some or all of the contra-parties, the specialist or his clerk must manually allocate the contracts to those participating registered options traders. For option classes with large trading crowds, this can be a very time consuming process that can delay the processing of trades. As the Exchange continues to develop a number of competitive initiatives to further enhance the processing of customer option orders, it is now proposing to develop and implement Quick Trade, an enhancement to the Amex Order File (AOF) and AODB that will automate the process of allocating trades to participating registered options traders.

Quick Trade would provide for the efficient allocation of executed contracts as set forth below. Registered options traders would be able to log onto the Quick Trade (''QT'') wheel through AOF. While registered options would not be required to participate in QT, they would be encouraged to sign on and remain on QT throughout the trading day. Each registered options trader signed on to QT would have the ability to advise the specialist prior to the usage of QT on any given trade that he does not want to receive an allocation through QT. In such a situation and in the situation where a registered options trader not signed on to QT wishes to participate in a given trade, the specialist would be unable to use QT to allocate the trade and the allocation would occur using the same manual process used today.

At the opening and throughout the trading day the QT wheel[4] would be activated to allocate contracts among registered options traders and the specialist in accordance with specific ratios set forth below.

ALLOCATION RATIO

| Number of traders on Quick Trade | Approximate number of contracts allocated to the specialist (In percent) | Approximate number of contracts allocated to the traders (as a group) (In percent) |
|---|---|---|
| 1 | 60 | 40 |
| 2–4 | 40 | 60 |
| 5–7 | 30 | 70 |
| 8–15 | 25 | 75 |
| 16 or more | 20 | 80 |

The QT wheel would provide for the automatic allocation of contracts to the specialist and registered options traders at various times during the trading day when QT is used for the following four AODB features. Registered options traders who have signed on to QT would be allocated trades whenever QT is used for any of these four AODB functions:[5]

- Quick Opening for pre-opening quantity allocations by class;
- Block Window for post-opening quantity allocations by series;
- The Auto-Match feature for executions when there is an imbalance; and
- Sweep of the Book allocation of contracts from multiple order executions.

**Quick Openings**

A specialist opens trading in each option series by establishing an opening price for that series and executing all market and marketable limit orders at this price. If after all opening orders have been executed an imbalance exists, QT would automatically allocate the imbalance of executed contracts to the specialist and the registered options traders signed on to QT in accordance with the ratios set forth above.

**Block Window**

The Block Window permits a specialist, in situations when there are limit orders on the book at various prices, to execute such limit orders at a single price. For example, the specialist has limit orders on the book to sell at

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposal was originally filed pursuant to Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A) and Rule 19b–4(f)(5) thereunder, 17 CFR 240.19b–4(f)(5). Amendment No. 1 converted the filing to a proposal submitted pursuant to Section 19(b)(2) under the Act, 15 U.S.C. 78s(b)(2). Amendment No. 2 made various clarifying changes to the proposal that are incorporated in the description herein.

[4] A rotational wheel is necessary because the allocation of the contracts in a trade exactly according to the percentages set forth in the accompanying table is not always possible, as in the case, for example, where the percentages would yield a fractional value for each trader. Telephone conversation between Claire P. McGrath, Vice President and Special Counsel, Amex, and Ira L. Brandriss, Special Counsel, Division of Market Regulation (''Division''), Commission, on October 17, 2001.

[5] As indicated above, the specialist would have the ability to determine on a trade-by-trade basis whether to use QT or to allocate the contracts manually. However, once QT was turned on, it would be assumed to remain on, and would be used to allocate contracts in all four of the functions designated below unless the specialist informed the crowd that he was turning it off. Telephone conversation between Claire P. McGrath, Amex, and Ira L. Brandriss, Division, Commission, on November 21, 2001.

$5.00, $5.05, $5.10, $5.15, and $5.20; in aggregate these orders represent 50 contracts. The specialist has determined to buy all 50 contracts at $5.20. The contracts would be allocated by QT to the specialist and registered traders in accordance with the ratios set forth above.

**Auto-Match**

The Auto-Match feature currently in AODB, which automatically matches and executes market and marketable limit orders that have by-passed the Exchange's automatic execution system (''Auto-Ex'') with limit orders on the AODB, would be modified to include registered trader participation when an imbalance exists.[6] Imbalances would be distributed among the specialist and registered traders according to the above allocation ratio. For example, the best bid is represented by a limit order to buy 10 contracts in an option class whose Auto-Ex eligible size is 20 contracts. A market order of 20 contracts to sell by-passes Auto-Ex and is routed to the AODB; 10 contracts are matched and executed with the limit order. The remaining 10 contracts would be allocated through QT to the specialists and registered traders.

**Sweep of the Book**

The Sweep of the Book function allows a specialist to simultaneously execute orders in multiple series at the quoted market. Following implementation of Quick Trade, contracts executed through the Sweep of the Book function would be automatically allocated by QT on a per series basis to the specialist and registered traders in accordance with the above allocation ratio.[7]

The Exchange believes that implementation of Quick Trade would increase the Exchange's competitiveness while furthering the efficient processing of customer option orders. Further, the Exchange believes that Quick Trade would enhance the fair and orderly allocation of orders executed on the Exchange especially during times of high trading volume by automating the allocation process.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5) of the Act[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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 the filing will also be available for inspection and copying at the principal offices of the Amex. All submissions should refer to File No. SR–Amex–2001–65 and should be submitted by January 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–32084 Filed 12–28–01; 8:45 am]

BILLING CODE 8010–01–M

[6] *See* Securities Exchange Act Release No. 42652 (April 7, 2000) 65 FR 20235 (April 14, 2000).

[7] QT would allocate the order(s) for each series separately. Telephone conversation between Claire P. McGrath, Amex, and Ira L. Brandriss, Division, Commission, on December 5, 2001.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45181; File No. SR–NASD–00–12]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Concerning Amendments to Rules Governing Member Communications with the Public

December 20, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 2000, NASD Regulation, Inc. (''NASD Regulation'') 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 NASD Regulation.[3] On August 8, 2001, NASD Regulation filed Amendment No. 1 to the proposed rule change.[4] On December 12, 2001, NASD Regulation filed Amendment No. 2 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NASD Regulation is proposing to amend Rule 2210 and the Interpretive Materials thereunder, promulgate new Rule 2211, and renumber existing Rule 2211, of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''). Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

**2200. Communications With Customers and The Public**

2210. Communications with the Public

(a) Definitions [Communications with the public shall include] For purposes of this Rule and any interpretation thereof, ''communications with the public'' consist of:

(1) *''*Advertisement.*''* [For purposes of this Rule and any interpretation thereof, ''advertisement'' means material] *Any material, other than an independently prepared reprint and institutional sales material, that is* published, or designed for use in, *any electronic or other public media, including any Web site,* [a] newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, *or* telephone directories (other than routine listings), [electronic or other public media].

(2) *''*Sales Literature.*''* [For purposes of this Rule and any interpretation thereof, ''sales literature'' means any] *Any* written or electronic communication, *other than an advertisement, independently prepared reprint, institutional sales material and correspondence, that is generally* distributed or made generally available to customers or the public, [which communication does not meet the foregoing definition of ''advertisement.'' Sales literature includes, but is not limited to], *including* circulars, research reports, market letters, performance reports or summaries, form letters, telemarketing scripts, seminar texts, [and] reprints *(that are not independently prepared reprints)* or excerpts of any other advertisement, sales literature or published article, *and press releases concerning a member's products or services.*

(3) *''*Correspondence*''* [For purposes of this Rule and any interpretation thereof, ''correspondence'' means any written or electronic communication prepared for delivery to a single current or prospective customer, and not for dissemination to multiple customers or the general public.] *as defined in Rule 2211(a)(1).*

*(4) ''Institutional Sales Material'' as defined in Rule 2211(a)(2).*

*(5) ''Public Appearance.'' Participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public appearance or public speaking activity.*

*(6) ''Independently Prepared Reprint.''*

*(A) Any reprint or excerpt of any article issued by a publisher, provided that:*

*(i) the publisher is not an affiliate of the member using the reprint or any underwriter or issuer of a security mentioned in the reprint;*

*(ii) neither the member using the reprint nor any underwriter or issuer of a security mentioned in the reprint has commissioned the reprinted article; and*

*(iii) the member using the reprint has not materially altered its contents except as necessary to make the reprint consistent with applicable regulatory standards or to correct factual errors;*

*(B) Any report concerning an investment company registered under the Investment Company Act of 1940, provided that:*

*(i) the report is prepared by an entity that is independent of the investment company, its affiliates, and the member using the report (the ''research firm'');*

*(ii) the report's contents have not been materially altered by the member using the report except as necessary to make the report consistent with applicable regulatory standards or to correct factual errors;*

*(iii) the research firm prepares and distributes reports based on similar research with respect to a substantial number of investment companies;*

*(iv) the research firm updates and distributes reports based on its research of the investment company with reasonable regularity in the normal course of the research firm's business;*

*(v) neither the investment company, its affiliates nor the member using the research report has commissioned the research used by the research firm in preparing the report; and*

*(vi) if a customized report was prepared at the request of the investment company, its affiliate or a member, then the report includes only information that the research firm has already compiled and published in another report, and does not omit information in that report necessary to make the customized report fair and balanced.*

(b) Approval and Recordkeeping

[(1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use or filing with the Association, by a registered principal of the member. This requirement may be met, only with respect to corporate debt and equity securities that are the subject of research reports as that term is defined in Rule 472 of the New York Stock Exchange, by the signature or initial of a supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange.]

[(2) A separate file of all advertisements and sales literature, including the name(s) of the person(s) who prepared them and/or approved their use, shall be maintained for a period of three years from the date of each use.]

*(1) Registered Principal Approval for Advertisements, Sales Literature and Independently Prepared Reprints*

*A registered principal of the member must approve by signature or initial and date each advertisement, item of sales literature and independently prepared reprint before the earlier of its use or filing with the Association's Advertising Regulation Department (''Department''). With respect to debt and equity securities that are the subject of research reports as that term is defined in Rule 472 of the New York Stock Exchange, this requirement may be met by the signature or initial of a supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange.*

*(2) Record-Keeping*

*(A) Members must maintain all advertisements, sales literature, and independently prepared reprints in a separate file for a period of three years from the date of last use. The file must include the name of the registered principal who approved each advertisement, item of sales literature, and independently prepared reprint and the date that approval was given.*

*(B) Members must maintain in a file information concerning the source of any statistical table, chart, graph or other illustration used by the member in communications with the public.*

(c) Filing Requirements and Review Procedures

[(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) not included within the requirements of paragraph (c)(2), and public direct participation programs (as defined in Rule 2810), and advertisements concerning government securities (as defined in Section 3(a)(42) of the Act) shall be filed with the Association's Advertising/Investment Companies Regulation Department (Department) within 10 days of first use or publication by any member. The member must provide with each filing the actual or anticipated date of first use. Filing in advance of use is recommended. Members are not required to file advertising and sales literature which have previously been filed and which are used without change. Any member filing any investment company advertisement or sales literature pursuant to this

paragraph (c) that includes or incorporates rankings or comparisons of the investment company with other investment companies shall include a copy of the ranking or comparison used in the advertisement or sales literature.]

*(1) Date of First Use and Approval Information*

*The member must provide with each filing under this paragraph the actual or anticipated date of first use, the name and title of the registered principal who approved the advertisement or sales literature, and the date that the approval was given.*

*(2) Requirement to File Certain Material*

*Within 10 business days of first use or publication, a member must file the following advertisements and sales literature with the Department:*

*(A) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts, continuously offered closed-end funds, and unit investment trusts) not included within the requirements of paragraph (c)(3). The filing of any advertisement or sales literature that includes or incorporates a performance ranking or performance comparison of the investment company with other investment companies must include a copy of the ranking or comparison used in the advertisement or sales literature.*

*(B) Advertisements and sales literature concerning public direct participation programs (as defined in Rule 2810).*

*(C) Advertisements concerning government securities (as defined in Section 3(a)(42) of the Act).*

[(2) Advertisements concerning collateralized mortgage obligations, and advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) that include or incorporate rankings or comparisons of the investment company with other investment companies where the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate, shall be filed with the Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, if expressly disapproved, until the advertisement has been refiled for, and has received, Association approval. The member must provide with each filing the actual or anticipated date of first use. Any member filing any investment company advertisement or sales literature pursuant to this paragraph shall include a copy of the data, ranking or comparison on which the ranking or comparison is based.]

*(3) Requirement to File Certain Material Prior to Use*

*At least 10 business days prior to first use or publication (or such shorter period as the Department may allow), a member must file the following communications with the Department and withhold them from publication or circulation until any changes specified by the Department have been made:*

*(A) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts, continuously offered closed-end funds and unit investment trusts) that include or incorporate performance rankings or performance comparisons of the investment company with other investment companies when the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate. Such filings must include a copy of the data on which the ranking or comparison is based.*

*(B) dvertisements concerning collateralized mortgage obligations.*

[(3)] *4* Requirement for Certain Members to File Material Prior to Use

(A) Each member [of the Association] *that* [which] has not previously filed advertisements with the [Association] *Department* (or with a registered securities exchange having standards comparable to those contained in this Rule) [shall] *must* file its initial advertisement with the Department at least [ten] *10 business* days prior to use and shall continue to file its advertisements at least [ten] *10 business* days prior to use for a period of one year. [The member must provide with each filing the actual or anticipated date of first use.]

[(B) Except for advertisements related to exempted securities (as defined in Section 3(a)(12) of the Act), municipal securities, direct participation programs or investment company securities, members subject to the requirements of paragraph (c)(3)(A) of this Rule may, in lieu of filing with the Association, file advertisements on the same basis, and for the same time periods specified in that subparagraph, with any registered securities exchange having standards comparable to those contained in this Rule.]

[(4) (A)] *(B)* Notwithstanding the foregoing provisions, the Department, upon review of a member's advertising and/or sales literature, and after determining that the member has departed [and there is a reasonable likelihood that the member will again depart] from the standards of this Rule, may require that such member file all advertising and/or sales literature, or the portion of such member's material *that* [which] is related to any specific types or classes of securities or services, with the Department, at least [ten] *10 business* days prior to use. [The member must provide with each filing the actual or anticipated date of first use.] [(B)] The Department [shall] *will* notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. [The requirement shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing under Rule 9514, and any such hearing shall be held in reasonable conformity with the hearing and appeal procedures of the Rule 9510 Series.] *Any filing requirement imposed under this paragraph will take effect 30 calendar days after the member receives the written notice, during which time the member may appeal pursuant to the hearing and appeal procedures of the Code of Procedure contained in the Rule 9510 Series.*

*(5) Filing of Television or Video Advertisements*

*If a member has filed a draft version or ''story board'' of a television or video advertisement pursuant to a filing requirement, then the member also must file the final filmed version within 10 business days of first use or broadcast.*

**[**(5) In addition to the foregoing requirements, every member's advertisements and sales literature shall be subject to a routine spot-check procedure. Upon written request from the Department, each member shall promptly submit the material requested. Members will not be required to submit material under this procedure which has been previously submitted pursuant to one of the foregoing requirements and, except for material related to exempted securities (as defined in Section 3(a)(12) of the Act), municipal securities, direct participation programs or investment company securities, the procedure will not be applied to members who have been, within the Association's current examination cycle subjected to a spot-check by a registered

securities exchange or other self-regulatory organization using procedures comparable to those used by the Association.]

*(6) Spot-Check Procedures*

*In addition to the foregoing requirements, each member's written and electronic communications with the public may be subject to a spot-check procedure. Upon written request from the Department, each member must submit the material requested in a spot-check procedure within the time frame specified by the Department.*

[(6)] *(7) Exclusions from Filing Requirements*

The following types of material are excluded from the [foregoing] filing requirements and (except for [research reports under] *the material in* paragraphs (G) *through (J))* the foregoing spot-check procedures:

*(A) Advertisements and sales literature that previously have been filed and that are to be used without material change.*

[(A)] *(B)* Advertisements [or] *and* sales literature solely related to *recruitment or* changes in a member's name, personnel, [location,] *electronic or postal address,* ownership, offices, business structure, officers or partners, telephone or teletype numbers, or concerning a merger with, or acquisition by, another member[;].

[(B)] *(C)* Advertisements [or] *and* sales literature [which] *that* do no more than identify the Nasdaq *or a national securities exchange* symbol of the member **[**and/or of a security in**]** *or identify a security for* which the member is a Nasdaq registered market maker[;].

[(C)] *(D)* Advertisements [or] *and* sales literature that [which] do no more than identify the member [and/]or offer a specific security at a stated price**[**;**]**.

[(D) Material sent to branch offices or other internal material that is not distributed to the public;]

(E) Prospectuses, preliminary prospectuses, *fund profiles*, offering circulars and similar documents [used in connection with an offering of securities which has been registered or] *that have been* filed with the *Securities and Exchange* Commission *(the ''SEC'')* or any state, or [which] *that* is exempt from such registration, except that an investment company prospectus published pursuant to SEC Rule 482 under the Securities Act of 1933 [shall] *will* not be considered a prospectus for purposes of this exclusion[;].

(F) Advertisements prepared in accordance with Section 2(10)(b) of the Securities Act of 1933, as amended, or any rule thereunder, such as SEC Rule 134, *and announcements as a matter of record that a member has participated in a private placement,* unless [such] *the* advertisements are related to direct participation programs or securities issued by registered investment companies.

[(G) Any research report concerning an investment company registered under the Investment Company Act of 1940, provided that:]

[(i) the report is prepared by an entity that is independent of the investment company, its affiliates, and the member using the report (the ''research firm'');]

[(ii) the report's contents have not been materially altered by the member using the report except as necessary to make the report consistent with applicable regulatory standards or to correct factual errors;]

[(iii) the research firm prepares and distributes reports based on similar research with respect to a substantial number of investment companies;]

[(iv) the research firm updates and distributes reports based on its research of the investment company with reasonable regularity in the normal course of the research firm's business;]

[(v) neither the investment company, its affiliates nor the member using the research report has commissioned the research used by the research firm in preparing the report; and]

[(vi) if a customized report was prepared at the request of the investment company, its affiliate or a member, then the report includes only information that the research firm has already compiled and published in another report, and does not omit information in that report necessary to make the customized report fair and balanced.]

*(G) Press releases that are made available only to members of the media.*

*(H) Independently prepared reprints.*

*(I) Correspondence.*

*(J) Institutional sales material.*

Although [research reports meeting the above requirements are] *the material described in paragraphs (c)(7)(G) through (J) is* excluded from the foregoing filing requirements, [they] *investment company communications described in those paragraphs* shall be deemed filed with the Association for purposes of Section 24(b) of the Investment Company Act of 1940 and Rule 24b–3 [of the Securities and Exchange Commission] thereunder.

[(7)] *(8)* Material [which] *that* refers to investment company securities, [or] direct participation programs, or exempted securities (as defined in Section 3(a)(12) of the Act) solely as part of a listing of products [and/]or services offered by the member, is excluded from the requirements of [sub]paragraphs [(1) and (2)] *(c)(2) and (c)(3).*

[(8) Exemptions.] *(9)* Pursuant to the Rule 9600 Series, the Association may exempt a member or person associated with a member from the pre-filing requirements of this paragraph *(c)* for good cause shown.

(d) *Content* Standards [Applicable to Communications With the Public]

(1) [General] Standards *Applicable to All Communications With the Public*

(A) All member communications with the public shall be based on principles of fair dealing and good faith, *must be fair and balanced,* and [should] *must* provide a sound basis for evaluating the facts in regard to any particular security [or securities] or type of security, industry [discussed] or service [offered]. No *member may omit any* material fact or qualification [may be omitted] if the omission, in the light of the context of the material presented, would cause the communications to be misleading.

(B) [Exaggerated, unwarranted or misleading statements or claims are prohibited in all public communications of members. In preparing such communications, members must bear in mind that inherent in investment are the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield, and no] *No member may make any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public. No* member [shall, directly or indirectly,] *may* publish, circulate or distribute any public communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

[(C) When sponsoring or participating in a seminar, forum, radio or television interview, or when otherwise engaged in public appearances or speaking activities which may not constitute advertisements, members and persons associated with members shall nevertheless follow the standards of paragraphs (d) and (f) of this Rule.]

[(D) In judging whether a communication or a particular element of a communication may be misleading, several factors should be considered, including but not limited to:]

[(i) the overall context in which the statement or statements are made. A statement made in one context may be misleading even though such a statement could be appropriate in another context. An essential test in this regard is the balance of treatment of risks and potential benefits.]

[(ii) the audience to which the communication is directed. Different levels of explanation or detail may be necessary depending on the audience to which a communication is directed, and the ability of the member given the nature of the media used, to restrict the audience appropriately. If the statements made in a communication would be applicable only to a limited audience, or if additional information might be necessary for other audiences, it should be kept in mind that it is not always possible to restrict the readership of a particular communication.]

[(iii) the overall clarity of the communication. A statement or disclosure made in an unclear manner can result in a lack of understanding of the statement, or in a serious misunderstanding. A complex or overly technical explanation may be more confusing than too little information. Likewise material disclosure relegated to legends or footnotes may not enhance the reader's understanding of the communication.]

*(C) Information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication.*

*(D) Communications with the public may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast. A hypothetical illustration of mathematical principles is permitted, provided that it does not predict or project the performance of an investment or investment strategy.*

*(E) If any testimonial in a communication with the public concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion.*

(2) [Specific] Standards *Applicable to Advertisements and Sales Literature*

[In addition to the foregoing general standards, the following specific standards apply:]

[(A) Necessary Data. Advertisements and sales literature shall contain the name of the member, unless such advertisements and sales literature comply with paragraph (f). Sales literature shall contain the name of the person or firm preparing the material, if other than the member, and the date on which it is first published, circulated or distributed. If the information in the material is not current, this fact should be stated.]

[(B) Recommendations.]

[(i) In making a recommendation in advertisements and sales literature, whether or not labeled as such, a member must have a reasonable basis for the recommendation and must disclose any of the following situations which are applicable:]

[a. that the member usually makes a market in the securities being recommended, or in the underlying security if the recommended security is an option, or that the member or associated persons will sell to or buy from customers on a principal basis;]

[b. that the member and/or its officers or partners own options, rights or warrants to purchase any of the securities of the issuer whose securities are recommended, unless the extent of such ownership is nominal;]

[c. that the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last three years.]

[(ii) The member shall also provide, or offer to furnish upon request, available investment information supporting the recommendation. Recommendations on behalf of corporate equities must provide the price at the time the recommendation is made.]

[(iii) A member may use material referring to past recommendations if it sets forth all recommendations as to the same type, kind, grade or classification of securities made by a member within the last year. Longer periods of years may be covered if they are consecutive and include the most recent year. Such material must also name each security recommended and give the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation, the price at which or the price range within which the recommendation was to be acted upon, and indicate the general market conditions during the period covered.]

[(iv) Also permitted is material which does not make any specific recommendation but which offers to furnish a list of all recommendations made by a member within the past year or over longer periods of consecutive years, including the most recent year, if this list contains all the information specified in subparagraph (iii). Neither the list of recommendations, nor material offering such list, shall imply comparable future performance. Reference to the results of a previous specific recommendation, including such a reference in a follow-up research report or market letter, is prohibited if the intent or the effect is to show the success of a past recommendation, unless all of the foregoing requirements with respect to past recommendations are met.]

[(C) Claims and Opinions. Communications with the public must not contain promises of specific results, exaggerated or unwarranted claims or unwarranted superlatives, opinions for which there is no reasonable basis, or forecasts of future events which are unwarranted, or which are not clearly labeled as forecasts.]

[(D) Testimonials. In testimonials concerning the quality of a firm's investment advice, the following points must be clearly stated in advertisements or sales literature:] *(A) Advertisements or sales literature providing any testimonial concerning the investment advice or investment performance of a member or its products must prominently disclose the following:*

(i) The *fact that the* testimonial may not be representative of the experience of other clients.

(ii) The *fact that the* testimonial is no guarantee of future performance or success.

(iii) If more than a nominal sum is paid, the fact that it is a paid testimonial [must be indicated].

[(iv) If the testimonial concerns a technical aspect of investing, the person making the testimonial must have knowledge and experience to form a valid opinion.]

[(E) Offers of Free Service. Any statement in communications with the public to the effect that any report, analysis, or other service will be furnished free or without any charge must not be made unless such report, analysis or other service actually is or will be furnished entirely free and without condition or obligation.]

[(F) Claims for Research Facilities. No claim or implication in communications with the public may be made for research or other facilities beyond those which the member actually possesses or has reasonable capacity to provide.]

[(G) Hedge Clauses. No cautionary statements or caveats, often called hedge clauses, may be used in communications with the public if they are misleading or are inconsistent with the content of the material.]

[(H) Recruiting Advertising. Advertisements in connection with the recruitment of sales personnel must not contain exaggerated or unwarranted claims or statements about opportunities in the investment banking or securities business and should not refer to specific earnings figures or ranges which are not reasonable under the circumstances.]

[(I) Periodic Investment Plans. Advertisements and sales literature should not discuss or portray any type

of continuous or periodic investment plan without disclosing that such a plan does not assure a profit and does not protect against loss in declining markets. In addition, if the material deals specifically with the principles of dollar-cost averaging, it should point out that since such a plan involves continuous investment in securities regardless of fluctuating price levels of such securities, the investor should consider his financial ability to continue his purchases through periods of low price levels.]

[(J) References to Regulatory Organizations. Communications with the public shall not make any reference to membership in the Association or to registration or regulation of the securities being offered, or of the underwriter, sponsor, or any member or associated person, which reference could imply endorsement or approval by the Association or any federal or state regulatory body. References to membership in the Association or Securities Investors Protection Corporation shall comply with all applicable By-Laws and Rules pertaining thereto.]

[(K) Identification of Sources. Statistical tables, charts, graphs or other illustrations used by members in advertising or sales literature should disclose the source of the information if not prepared by the member.]

[(L) Claims of Tax Free/Tax Exempt Returns. Income or investment returns may not be characterized in communications with the public as tax free or exempt from income tax where tax liability is merely postponed or deferred. If taxes are payable upon redemption, that fact must be disclosed in advertisements and sales literature. References in advertisements and sales literature to tax free/tax exempt current income must indicate which income taxes apply or which do not unless income is free from all applicable taxes. For example, if income from an investment company investing in municipal bonds may be subject to state or local income taxes, this should be stated, or the illustration should otherwise make it clear that income is free from federal income tax.]

[(M) Comparisons. In making a comparison in advertisements or sales literature, either directly or indirectly, the member must make certain that the purpose of the comparison is clear and must provide a fair and balanced presentation, including any material differences between the subjects of comparison. Such differences may include investment objectives, sales and management fees, liquidity, safety, guarantees or insurance, fluctuation of principal and/or return, tax features, and any other factors necessary to make such comparisons fair and not misleading.]

[(N) Predictions and Projections. In communications with the public, investment results cannot be predicted or projected. Investment performance illustrations may not imply that gain or income realized in the past will be repeated in the future. However, for purposes of this Rule, hypothetical illustrations of mathematical principles are not considered projections of performance; e.g., illustrations designed to show the effects of dollar cost averaging, tax-free compounding, or the mechanics of variable annuity contracts or variable life policies.]

*(B) Any comparison in advertisements or sales literature between investments or services must disclose all material differences between them, including (as applicable) investment objectives, costs and expenses, liquidity, safety, guarantees or insurance, fluctuation of principal or return, and tax features.*

*(C) All advertisements and sales literature must:*

*(i) prominently disclose the name of the member and may also include a fictional name by which the member is commonly recognized or which is required by any state or jurisdiction;*

*(ii) reflect any relationship between the member and any non-member or individual who is also named; and*

*(iii) if it includes other names, reflect which products or services are being offered by the member.*

*This paragraph (C) does not apply to so-called ''blind'' advertisements used to recruit personnel.*

(e) [Application] *Violation* of [SEC] *Other* Rules

[In addition to the provisions of paragraph (d) of this Rule, members' public communications shall conform to all applicable rules of the Commission, as in effect at the time the material is used.] *Any violation by a member of any rule of the SEC, the Securities Investor Protection Corporation or the Municipal Securities Rulemaking Board applicable to member communications with the public will be deemed a violation of this Rule 2210.*

[(f) Standards Applicable to the Use and Disclosure of the Association Member's Name]

[(1) In addition to the provisions of paragraph (d) of this Rule, members' public communications shall conform to the following provisions concerning the use and disclosure of member names. The term ''communication'' as used herein shall include any item defined as either ''advertising'' or ''sales literature'' in paragraph (a). The term ''communication'' shall also include, among other things, business cards and letterhead.]

[(2) General Standards]

[(A) Any communication used in the promotion of a member's securities business must clearly and prominently set forth the name of the Association member. This requirement shall not apply to so-called ''blind'' advertisements used for recruiting personnel or to those communications meeting the provisions of paragraph (f)(3).]

[(B) If a non-member entity is named in a communication in addition to the member, the relationship, or lack of relationship, between the member and the entity shall be clear.]

[(C) If a non-member entity is named in a communication in addition to the member and products or services are identified, no confusion shall be created as to which entity is offering which products and services. Securities products and services shall be clearly identified as being offered by the member.]

[(D) If an individual is named in a communication containing the names of the member and a non-member entity, the nature of the affiliation or relationship of the individual with the member shall be clear.]

[(E) Communications that refer to individuals may not include, with respect to such individuals, references to nonexistent or self-conferred degrees or designations, nor may such communications make reference to bona fide degrees or designations in a misleading manner.]

[(F) If a communication identifies a single company, the communication shall not be used in a manner which implies the offering of a product or service not available from the company named.]

[(G) The positioning of disclosure can create confusion even if the disclosures or references are entirely accurate. To avoid confusion, a reference to an affiliation (e.g., registered representative) shall not be placed in proximity to the wrong entity.]

[(H) Any reference to membership (e.g., NASD, SIPC, etc.) shall be clearly identified as belonging to the entity that is the actual member of the organization.]

[(3) Specific Standards]

[The foregoing standards set forth in subparagraphs (1) and (2) shall apply to all communications unless at least one of the following special circumstances exists, in which case the standards set

forth herein would supersede the standards in subparagraphs (1) and (2).]

[(A) Doing Business As. An Association member may use a fictional name in communications provided that the following conditions are met:]

[(i) Non-Required Fictional Name. A member may voluntarily use a fictional name provided that the name has been filed with the Association and the Commission, all business is conducted under that name and it is the only name by which the firm is recognized.]

[(ii) Required Fictional Name. If a state or other regulatory authority requires a member to use a fictional name, the following conditions shall be met:]

[a. The fictional name shall be used to conduct business only within the state or jurisdiction requiring its use.]

[b. If more than one state or jurisdiction requires a firm to use a fictional name, the same name shall be used in each, wherever possible.]

[c. Any communication shall disclose the name of the member and the fact that the firm is doing business in that state or jurisdiction under the fictional name, unless the regulatory authority prohibits such disclosure.]

[(B) Generic Names. An Association member may use an ''umbrella'' designation to promote name recognition, provided that the following conditions are met:]

[(i) The name of the member shall be clearly and prominently disclosed;]

[(ii) The relationship between the generic name and the member shall be clear; and]

[(iii) There shall be no implication that the generic name is the name of a registered broker/dealer.]

[(C) Derivative Names. An Association member may use a derivative of the firm name to promote certain areas of the firm's business, provided that the name of the member is clearly and prominently disclosed. Absent such disclosure, the following conditions must be met:]

[(i) The name used to promote a specific area of the firm's business shall be a derivative of the member name; and]

[(ii) The derivative name shall not be misleading in the context in which it is being used.]

[(D) ''Division of.'' An Association member firm may designate an aspect of its business as a division of the firm, provided that the following conditions are met:]

[(i) The designation shall only be used by a bona fide division of the member. This shall include:]

[a. a division resulting from a merger or acquisition that will continue the previous firm's business; or]

[b. a functional division that conducts or will conduct one specialized aspect of the firm's business.]

[(ii) The name of the member shall be clearly and prominently disclosed.]

[(iii) The division shall be clearly identified as a division of the member firm.]

[(E) ''Service of/Securities Offered Through.'' An Association member firm may identify its brokerage service being offered through other institutions as a service of the member, provided that the following conditions are met:]

[(i) The name of the member shall be clearly and prominently disclosed.]

[(ii) The service shall be clearly identified as a service of the member firm.]

[(F) Telephone Directory Line Listings, Business Cards and Letterhead. All such listings, cards or letterhead shall conform to the provisions of Rule 3010(g)(2).]

[IM–2210–1. Communications With the Public About Collateralized Mortgage Obligations (CMOs)]

[(a) General Considerations]

[For purposes of the following guidelines, the term ''collateralized mortgage obligation'' (CMO) refers to a multiclass bond backed by a pool of mortgage pass-through securities or mortgage loans. CMOs are also known as ''real estate mortgage investment conduits'' (REMICs). As a result of the 1986 Tax Reform Act, most CMOs are issued in REMIC form to create certain tax advantages for the issuer. The term CMO and REMIC are now used interchangeably. In order to prevent advertisements and sales literature regarding CMOs from being false or misleading, there are certain factors to be considered, including, but not limited to, the following:]

[(1) Product Identification]

[In order to assure that investors understand exactly what security is being discussed, all communications concerning CMOs should clearly describe the product as a ''collateralized mortgage obligation.'' Member firms should not use the proprietary names for CMOs as they do not adequately identify the product. To prevent confusion and the possibility of misleading the reader, communications should not contain comparisons between CMOs and any other investment vehicle, including Certificates of Deposit.]

[(2) Educational Material]

[In order to ensure that customers are adequately informed about CMOs members are required to offer to customers educational material which covers the following matters:]

[(A) A discussion of CMO characteristics as investments and their attendant risks;]

[(B) An explanation of the structure of a CMO, including the various types of tranches;]

[(C) A discussion of mortgage loans and mortgage securities;]

[(D) Features of CMOs, including: credit quality, prepayment rates and average lives, interest rates (including effect on value and prepayment rates), tax considerations, minimum investments, transactions costs and liquidity;]

[(E) Questions an investor should ask before investing; and]

[(F) A glossary of terms that may be helpful to an investor considering an investment.]

[(3) Safety Claims]

[A communication should not overstate the relative safety offered by the CMO. Although CMOs generally offer low investment risk, they are subject to market risk like all investment securities and there should be no implication otherwise. Accordingly, references to liquidity should be balanced with disclosure that, upon resale, an investor may receive more or less than his original investment.]

[(4) Claims About Government Guarantees]

[(A) Communications should accurately depict the guarantees associated with CMO securities. For example, in most cases it would be misleading to state that CMOs are ''government guaranteed'' securities. A government agency issue could instead be characterized as government agency backed. Of course, private-issue CMO advertisements should not contain references to guarantees or backing, but may disclose the rating.]

[(B) If the CMO is offered at a premium, the communication should clearly indicate that the government agency backing applies only to the face value of the CMO, and not to any premium paid. Furthermore, communications should not imply that either the market value or the anticipated yield of the CMO is guaranteed.]

[(5) Simplicity Claims]

[CMOs are complex securities and require full, fair and clear disclosure in order to be understood by the investor. A communication should not imply that these are simple securities that may be suitable for any investor seeking high yields. All CMOs do not have the same

characteristics and it is misleading to indicate otherwise. Even though two CMOs may have the same underlying collateral, they may differ greatly in their prepayment speed and volatility.]

[(6) Claims About Predictability]

[A communication would be misleading if it indicated that the anticipated yield and average life of a CMO were assured. It should disclose that the yield and average life will fluctuate depending on the actual prepayment experience and changes in current interest rates.]

[(b) Print Advertising]

[(1) Educational advertising, discussing generally the features of CMOs, can be a very useful and informative tool in explaining these securities to the investing public. However, such ''generic'' advertising should not contain anticipated yield or coupon rates.]

[(2) Advertising relating to CMOs must be filed with the Association's Advertising/Investment Companies Regulation Department for review at least ten days prior to use, pursuant to requirements in Rule 2210.]

[(3) The Association has developed a standardized CMO advertisement that provides information deemed necessary to prevent the communication from being misleading. Members must file the standardized CMO advertisement, ten days prior to its first use, with the Association's Advertising/Investment Companies Regulation Department.]

[(4) Members are not required to use the standardized CMO advertisement. If firms do not elect to use the standardized CMO advertisement, they should ensure that their advertising contains the same information and meets the same conditions as the standardized CMO advertisement. Members using a non-standardized format must file the advertisement ten days prior to first use.]

[(5) After an advertisement has been filed prior to initial use, subsequent use of the identical advertisement, changed only to reflect the updated information for the security being advertised, does not require re-filing with the Association. Such advertisements must be approved by a principal (or designee) and maintained in the member firm's files as required by the Association's Rules.]

[(6) Standardized CMO Advertisement]

[(A) The standardized CMO advertisement contains four sections, each of which must be given an equal portion of space in the advertisement. The information in Sections 1 and 2 is required to be included in advertising for CMOs. The information suggested for Section 3 is optional; therefore, the member may elect to include any, all or none of this information in the advertisement. The information in Section 4 may be tailored to the member's preferred signature. An example of the standardized CMO advertisement may be found at the end of these guidelines.]

[Section 1 Title Collateralized Mortgage Obligations
Coupon Rate
Anticipated Yield/Average Life
Specific Tranche—Number & Class
Final Maturity Date
Underlying Collateral]

[Section 2 Disclosure Statement:
''The yield and average life shown above consider prepayment assumptions *that may or may not be met.* Changes in payments may significantly affect yield and average life. Please contact your representative for information on CMOs and how they react to different market conditions.'']

[Section 3 Product Features (Optional):
Minimum Denominations
Rating Disclosure
Agency/Government Backing
Income Payment Structure
Generic Description of Tranche (e.g., PAC, Companion)]

[Section 4 Company Information: Name, Address, Telephone Number, Representative's Name, Memberships]

[(B) If this standardized CMO advertisement is used, the following conditions must also be met:]

[(i) All figures in Section 1 must be in equal type size.]

[(ii) The disclosure language in Section 2 may not be altered and must be given equal prominence with Section 1.]

[(iii) The prepayment assumption used to determine the advertised yield and average life must either be obtained from a nationally recognized service (e.g., Bloomberg, Telerate) or the member firm must be able to justify the assumption used. A copy of either the service's listing for the CMO or the firm's justification must be attached to the copy of the advertisement that is maintained in the firm's advertising files in order to verify that the prepayment scenario advertised is reasonable and to satisfy the conditions for waiving the pre-use filing requirement.]

[(iv) If a member intends to impose a sales charge, a reasonable sales charge should be reflected in the anticipated yield.]

[(v) The advertisement must include language stating that the security is ''offered subject to prior sale and price change.'' This language may be included in any one of the four sections.]

[(vi) If the bond advertised is an accrual bond, the following language should be included in Section 1: ''This is an accrual bond and may not currently pay principal and interest.'']

[(vii) If the bond is being offered at par, the advertisement may include the yield to maturity in Section 1.]

[(C) No additional information may be included in the standardized advertisement.]

[(c) Radio/Television Advertising]

[(1) Radio and television advertising alternatives are too varied to attempt to provide standardized formats for either medium. Such advertisements must be filed with the Association at least ten days prior to first use. The storyboard or other description should accompany the filing of a television advertisement.]

[(2) If an advertisement is filed with the Association prior to its initial use, it is not necessary to subsequently refile the advertisement if the only changes are to update the information relating to the security being advertised. A copy of each advertisement should be approved by a principal (or designee) and should be maintained, along with a copy of the listing for the CMO or the firm's justification, in the member firm's files in accordance with Association Rules.]

[(3) The following guidelines should be followed when developing radio and television advertisements:]

[(A) The advertisements must be preceded by the following oral disclaimer: ''The following is an advertisement for Collateralized Mortgage Obligations. Contact your representative for information on CMOs and how they react to different market conditions.'']

[(B) The advertisements must disclose the information contained in Section 1 of the standardized CMO advertisement above:][Coupon Rate, Anticipated Yield, Average Life, Final Maturity Date, Initial Issue Tranche (Number and Class), and Underlying Collateral.]

[(C) The advertisements must contain the following oral disclosure statement:]

['''The yield and average life consider prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life.''']

[(D) The advertisements must state that the CMO is ''offered subject to prior sale and price change.''']

[(E) If a member intends to impose a sales charge, a reasonable sales charge should be reflected in the anticipated yield.]

[(F) If the bond advertised is an accrual bond, the following language should be included:]

[''This is an accrual bond and may not currently pay principal and interest.''] [(G) If the bond is being offered at par, the advertisement may include the yield to maturity.]

[Example of Standardized CMO Advertisement (See IM–2210–1.)]

[Collateralized Mortgage Obligations]

[8.50% Coupon
8.75% Anticipated Yield to 10-Year Average Life
FNMA 9532X, Final Maturity March 2010
Collateral 100% FNMA 8.50%]

[The yield and average life shown above consider prepayment assumptions *that may or may not be met.* Changes in payments may significantly affect yield and average life. Please contact your representative for information on CMOs and how they react to different market conditions.]

[$5,000 Minimum
Income Paid Monthly
Implied Rating/Volatility Rating
U.S. Gov't Agency Backed
Generic Description (e.g., PAC, Companion, Sequential Pay Bonds)]

[Company Name
Contact Person
Address
City, State, ZIP Code
Phone Number]

[Offered subject to prior sale and price change.]

[Member SIPC]

*IM–2210–1. Guidelines To Ensure That Communications With the Public Are Not Misleading*

*Every member is responsible for determining whether any communication with the public, including material that has been filed with the Department, complies with all applicable standards, including the requirement that the communication not be misleading. In order to meet this responsibility, member communications with the public must conform with the following guidelines. These guidelines do not represent an exclusive list of considerations that a member must make in determining whether a communication with the public complies with all applicable standards.*

*(1) Members must ensure that statements are not misleading within the context in which they are made. A statement made in one context may be misleading even though such a statement could be appropriate in another context. An essential test in this regard is the balanced treatment of risks and potential benefits. Member communications should be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments.*

*(2) Members must consider the nature of the audience to which the communication will be directed. Different levels of explanation or detail may be necessary depending on the audience to which a communication is directed. Members must keep in mind that it is not always possible to restrict the audience that may have access to a particular communication with the public. Additional information or a different presentation of information may be required depending upon the medium used for a particular communication and the possibility that the communication will reach a larger or different audience than the one initially targeted.*

*(3) Member communications must be clear. A statement made in an unclear manner can cause a misunderstanding. A complex or overly technical explanation may be more confusing than too little information.*

*(4) In communications with the public, income or investment returns may not be characterized as tax-free or exempt from income tax when tax liability is merely postponed or deferred, such as when taxes are payable upon redemption.*

*(5) In advertisements and sales literature, references to tax free or tax exempt income must indicate which income taxes apply, or which do not, unless income is free from all applicable taxes. For example, if income from an investment company investing in municipal bonds is subject to state or local income taxes, this fact must be stated, or the illustration must otherwise make it clear that income is free only from federal income tax.*

*(6) Recommendations*

*(A) In making a recommendation in advertisements and sales literature, whether or not labeled as such, a member must have a reasonable basis for the recommendation and must disclose any of the following situations which are applicable:*

*(i) that the member usually makes a market in the securities being recommended, or in the underlying security if the recommended security is an option, or that the member or associated persons will sell to or buy from customers on a principal basis;*

*(ii) that the member and/or its officers or partners own options, rights or warrants to purchase any of the securities of the issuer whose securities are recommended, unless the extent of such ownership is nominal;*

*(iii) that the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last three years.*

*(B) The member shall also provide, or offer to furnish upon request, available investment information supporting the recommendation. Recommendations on behalf of corporate equities must provide the price at the time the recommendation is made.*

*(C) A member may use material referring to past recommendations if it sets forth all recommendations as to the same type, kind, grade or classification of securities made by a member within the last year. Longer periods of years may be covered if they are consecutive and include the most recent year. Such material must also name each security recommended and give the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation, the price at which or the price range within which the recommendation was to be acted upon, and indicate the general market conditions during the period covered.*

*(D) Also permitted is material that does not make any specific recommendation but which offers to furnish a list of all recommendations made by a member within the past year or over longer periods of consecutive years, including the most recent year, if this list contains all the information specified in subparagraph (C). Neither the list of recommendations, nor material offering such list, shall imply comparable future performance. Reference to the results of a previous specific recommendation, including such a reference in a follow-up research report or market letter, is prohibited if the intent or the effect is to show the success of a past recommendation, unless all of the foregoing requirements with respect to past recommendations are met.*

IM–2210–2. Communications With the Public About Variable Life Insurance and Variable Annuities

The standards governing communications with the public are set forth in Rule 2210. In addition to those standards, the following guidelines must be considered in preparing advertisements and sales literature about variable life insurance and variable annuities. The guidelines are applicable to advertisements and sales literature as defined in Rule 2210, as well as individualized communications such as personalized letters and computer generated illustrations,

whether printed or made available on-screen.

(a) General Considerations

(1) Product Identification

In order to assure that investors understand exactly what security is being discussed, all communications must clearly describe the product as either a variable life insurance policy or a variable annuity, as applicable. Member firms may use proprietary names in addition to this description. In cases where the proprietary name includes a description of the type of security being offered, there is no requirement to include a generalized description. For example, if the material includes a name such as the ''XYZ Variable Life Insurance Policy,'' it is not necessary to include a statement indicating that the security is a variable life insurance policy. Considering the significant differences between mutual funds and variable products, the presentation must not represent or imply that the product being offered or its underlying account is a mutual fund.

(2) Liquidity

Considering that variable life insurance and variable annuities frequently involve substantial charges and/or tax penalties for early withdrawals, there must be no representation or implication that these are short-term, liquid investments. Presentations regarding liquidity or ease of access to investment values must be balanced by clear language describing the negative impact of early redemptions. Examples of this negative impact may be the payment of contingent deferred sales loads and tax penalties, and the fact that the investor may receive less than the original invested amount. With respect to variable life insurance, discussions of loans and withdrawals must explain their impact on cash values and death benefits.

(3) Claims About Guarantees

Insurance companies issuing variable life insurance and variable annuities provide a number of specific guarantees. For example, an insurance company may guarantee a minimum death benefit for a variable life insurance policy or the company may guarantee a schedule of payments to a variable annuity owner. Variable life insurance policies and variable annuities may also offer a fixed investment account which is guaranteed by the insurance company. The relative safety resulting from such a guarantee must not be overemphasized or exaggerated as it depends on the claims-paying ability of the issuing insurance company. There must be no representation or implication that a guarantee applies to the investment return or principal value of the separate account. Similarly, it must not be represented or implied that an insurance company's financial ratings apply to the separate account.

(b) Specific Considerations

(1) Fund Performance Predating Inclusion in the Variable Product

In order to show how an existing fund would have performed had it been an investment option within a variable life insurance policy or variable annuity, communications may contain the fund's historical performance that predates its inclusion in the policy or annuity. Such performance may only be used provided that no significant changes occurred to the fund at the time or after it became part of the variable product. However, communications may not include the performance of an existing fund for the purposes of promoting investment in a similar, but new, investment option (i.e., clone fund or model fund) available in a variable contract. The presentation of historical performance must conform to applicable Association and SEC standards. Particular attention must be given to including all elements of return and deducting applicable charges and expenses.

(2) Product Comparisons

A comparison of investment products may be used provided the comparison complies with applicable requirements set forth under Rule 2210. Particular attention must be paid to the specific standards regarding ''comparisons'' set forth in [Rule 2210(d)(2)(M)] *Rule 2210(d)(2)(B).*

(3) Use of Rankings

A ranking which reflects the relative performance of the separate account or the underlying investment option may be included in advertisements and sales literature provided its use is consistent with the standards contained in IM–2210–3.

(4) Discussions Regarding Insurance and Investment Features of Variable Life Insurance

Communications on behalf of single premium variable life insurance may emphasize the investment features of the product provided an adequate explanation of the life insurance features is given. Sales material for other types of variable life insurance must provide a balanced discussion of these features.

(5) Hypothetical Illustrations of Rates of Return in Variable Life Insurance Sales Literature and Personalized Illustrations

(A) (i) Hypothetical illustrations using assumed rates of return may be used to demonstrate the way a variable life insurance policy operates. The illustrations show how the performance of the underlying investment accounts could affect the policy cash value and death benefit. These illustrations may not be used to project or predict investment results as such forecasts are strictly prohibited by the Rules. The methodology and format of hypothetical illustrations must be modeled after the required illustrations in the prospectus.

(ii) An illustration may use any combination of assumed investment returns up to and including a gross rate of 12%, provided that one of the returns is a 0% gross rate. Although the maximum assumed rate of 12% may be acceptable, members are urged to assure that the maximum rate illustrated is reasonable considering market conditions and the available investment options. The purpose of the required 0% rate of return is to demonstrate how a lack of growth in the underlying investment accounts may affect policy values and to reinforce the hypothetical nature of the illustration.

(iii) The illustrations must reflect the maximum (guaranteed) mortality and expense charges associated with the policy for each assumed rate of return. Current charges may be illustrated in addition to the maximum charges.

(iv) Preceding any illustration there must be a prominent explanation that the purpose of the illustration is to show how the performance of the underlying investment accounts could affect the policy cash value and death benefit. The explanation must also state that the illustration is hypothetical and may not be used to project or predict investment results.

(B) In sales literature which includes hypothetical illustrations, member firms may provide a personalized illustration which reflects factors relating to the individual customer's circumstances. A personalized illustration may not contain a rate of return greater than 12% and must follow all of the standards set forth in subparagraph (A), above.

(C) In general, it is inappropriate to compare a variable life insurance policy with another product based on hypothetical performance as this type of presentation goes beyond the singular purpose of illustrating how the performance of the underlying investment accounts could affect the policy cash value and death benefit. It is permissible, however, to use a

hypothetical illustration in order to compare a variable life insurance policy to a term policy with the difference in cost invested in a side product. The sole purpose of this type of illustration would be to demonstrate the concept of tax-deferred growth as a result of investing in the variable product. The following conditions must be met in order to make this type of comparison balanced and complete:

(i) the comparative illustration must be accompanied by an illustration which reflects the standards outlined in subparagraph (A), above;

(ii) the rate of return used in the comparative illustration must be no greater than 12%;

(iii) the rate of return assumed for the side product and the variable life policy must be the same;

(iv) the same fees deducted from the required prospectus illustration must be deducted from the comparative illustration;

(v) the side product must be illustrated using gross values which do not reflect the deduction of any fees; and,

(vi) the side product must not be identified or characterized as any specific investment or investment type.

IM–2210–3. Use of Rankings in Investment Companies Advertisements and Sales Literature

(a) Definition of ''Ranking Entity''

For purposes of the following guidelines, the term ''Ranking Entity'' refers to any entity that provides general information about investment companies to the public, that is independent of the investment company and its affiliates, and whose services are not procured by the investment company or any of its affiliates to assign the investment company a ranking.

(b) General Prohibition

Members [shall] *may* not use [in] investment company *rankings in any* advertisement[s,] *or item of* sales literature [or general promotional material any investment company rankings] other than [those developed and produced by entities that meet the definition of ''Ranking Entity,'' and which conform to the requirements of the guidelines herein] *(1) rankings created and published by Ranking Entities or (2) rankings created by an investment company or an investment company affiliate but based on the performance measurements of a Ranking Entity. Rankings in advertisements and sales literature also must conform to the following requirements.*

(c) Required Disclosures

(1) Headlines/Prominent Statements

[(A)] A headline or other prominent statement must not state or imply that an investment company *or investment company family* is the best performer in a category unless it is actually ranked first in the category.

[(B) Prominent disclosure of the investment company's ranking, the total number of investment companies in the category, the name of the category, and the period on which the ranking is based (i.e., the length of the period and the ending date; or, the first day of the period and the ending date), must appear in close proximity to any headline or other prominent statement that refers to a ranking.]

(2) Required Prominent Disclosure

All advertisements and sales literature containing an investment company ranking must disclose *prominently*[, with respect to the ranking]:

(A) the name of the category (e.g., growth);

(B) the number of investment companies *or, if applicable, investment company families,* in the category;

(C) the name of the Ranking Entity *and, if applicable, the fact that the investment company or an affiliate created the category or subcategory;*

(D) the length of the period [and the ending date,] (or[,] the first day of the period) and [the] *its* ending date; *and*

(E) criteria on which the ranking is based *(e.g., total return, risk-adjusted performance).*[;]

(3) Other Required Disclosure

*All advertisements and sales literature containing an investment company ranking also must disclose:*

*(A) the fact that past performance is no guarantee of future results;*

[(F)] *(B)* for investment companies [which] *that* assess front-end sales loads, whether the ranking takes *those loads* into account [sales charges];

[(G)] *(C)* if the ranking is based on total return or the current SEC standardized yield, *and* fees have been waived or expenses advanced during the period on which the ranking is based and the waiver or advancement had a material effect on the total return or yield for that period, a statement to that effect; [and]

(D) the publisher of the ranking data (e.g., ''ABC Magazine, June *1999* [1993]'')[. The disclosure required by subparagraph (A) through (D) above, must be set forth prominently in the body of the advertisement or sales literature.]*; and*

[(3)] (E) [If] *if* the [investment company] ranking consists of a symbol (e.g., a star system) rather than a number, [the advertisement or sales literature also must disclose] the meaning of the symbol (e.g., a four-star ranking indicates that the fund is in the top 30% of all investment companies).

[(4) All advertisements and sales literature containing an investment company ranking must disclose that past performance is no guarantee of future results.]

(d) Time Periods

(1) *Current Rankings*

Any investment company ranking *included* [set forth] in an [advertisement or] *item of* sales literature must be, at a minimum, current to the most recent calendar quarter ended *prior to use. Any investment company ranking included in* [, in the case of] an advertisement *must be, at minimum, current to the most recent calendar quarter ended* prior to the submission for publication[, or, in the case of sales literature, prior to use]. *If no ranking that meets this requirement is available from the Ranking Entity, then a member may only use the most current ranking available from the Ranking Entity unless use of the most current ranking would be misleading, in which case no ranking from the Ranking Entity may be used.*

(2) Rankings Time Periods; Use of Yield Rankings

Except for money market mutual funds:

(A) advertisements and sales literature [must not use any rankings other than rankings based on yield, based on a period of less than one year] *may not present any ranking that covers a period of less than one year, unless the ranking is based on yield*;

(B) an investment company ranking based on total return must be accompanied by rankings based on total return for a one year period for investment companies in existence for at least one year; one and five year periods for investment companies in existence for at least five years, and one, five and ten year periods for investment companies in existence for at least ten years supplied by the same Ranking Entity, relating to the same investment category, and based on the same time period; provided that, if rankings for such one, five and ten year time periods are not published by the Ranking Entity, then rankings representing short, medium and long term performance must be provided in place of rankings for the required time periods; and

(C) an investment company ranking based on yield may be based only on the current SEC standardized yield *and*

*must be accompanied by total return rankings for the time periods specified in paragraph (d)(2)(B).* [An investment company ranking based on the current SEC standardized yield must be accompanied by rankings based on total return for a one year period for investment companies in existence for at least one year; one and five year periods for investment companies in existence for at least five years; and one, five and ten year periods for investment companies in existence for at least ten years supplied by the same Ranking Entity, relating to the same investment category, and based on the same time period; provided that, if rankings for such, one, five and ten year time periods are not published by the Ranking Entity, then rankings representing short, medium and long term performance must be provided in place of rankings for the required time periods.]

(e) Categories

(1) The choice of category (including a subcategory of a broader category) on which the investment company ranking is based must be one that provides a sound basis for evaluating the performance of the investment company.

(2) [Subject to the standards below, an] *An* investment company ranking must be based only on (A) a category or subcategory created and published by a Ranking Entity or (B) a category or subcategory created by an investment company or an investment company affiliate but based on the performance measurements of a Ranking Entity.

[(3) When the investment company ranking is based on a subcategory, the advertisement or sales literature must disclose the name of the full category and the investment company's ranking and the number of investment companies in the full category. This requirement does not apply if the subcategory is (A) based solely on the investment objectives of the investment companies included and (B) created by a Ranking Entity. This disclosure could be included in a footnote.]

[(4) The] *(3) An* advertisement or sales literature may not use any category or subcategory that is based upon the [investment company's] asset size *of an investment company or investment company family,* [(]whether or not it has been created by a Ranking Entity[)].

[(5) If an advertisement uses a category created by the investment company or an investment company affiliate, including a ''subcategory'' of a category established by a Ranking Entity, the advertisement must prominently disclose:]

[(A) the fact that the investment company or its affiliate has created the ranking category;]

[(B) the number of investment companies in the category;]

[(C) the basis for selecting the category; and]

[(D) the Ranking Entity that developed the research on which the ranking is based.]

[(6) An advertisement or sales literature containing a headline or other prominent statement that proclaims an investment company ranking created by an investment company or its affiliate must indicate, in close proximity to the headline or statement, that the investment company ranking is based upon a category created by the investment company or its affiliate.]

(f) Multiple Class/Two-Tier Funds

Investment company rankings for more than one class of investment company with the same portfolio must be accompanied by prominent disclosure of the fact that the investment companies or classes have a common portfolio.

*(g) Investment Company Families*

*Advertisements and sales literature may contain rankings of investment company families, provided that these rankings comply with the guidelines above, and further provided that no advertisement or sales literature for an individual investment company may provide a ranking of an investment company family unless it also prominently discloses the various rankings for the individual investment company supplied by the same Ranking Entity, as described in paragraph (d)(2)(B). For purposes of this IM–2210–3, the term ''investment company family'' means any two or more registered investment companies or series thereof that hold themselves out to investors as related companies for purposes of investment and investor services.*

IM–2210–4. Limitations on Use of Association's Name

(a) *Statements of Membership* [Use of Association Name]

Members may indicate membership in the Association in conformity with Article XV, Section 2 of the NASD By-Laws in the following ways:

[(1) A member may indicate membership in the Association in recognized trade directories or other similar types of business listings.]

[(2) A member may indicate membership in the Association in the member's advertisements and sales literature if such use is:]

[(A) separate from the regular text of the advertisement or sales literature;

[(B) in a smaller type size and with less emphasis than that used for the member's name; and]

[(C) carries no direct or implied indication of Association approval of any security or service discussed in the advertisement or sales literature.]

*(1) in any communication with the public, provided that the communication complies with the applicable standards of Rule 2210 and neither states nor implies that the Association or any other regulatory organization endorses, indemnifies, or guarantees the member's business practices, selling methods, the class or type of securities offered, or any specific security;*

[(3) A] *(2) in a* confirmation *statement* [form] for an over-the-counter transaction *that states* [may include the following statement]: ''This transaction has been executed in conformity with the Uniform Practice Code of the National Association of Securities Dealers, Inc.''

[(4) A member may indicate membership in the Association on the door or entrance way of a member's principal office or a registered branch office in the following manner: ''Member, National Association of Securities Dealers, Inc.'' or ''Member of the National Association of Securities Dealers, Inc.''.]

(b) Certification of Membership

Upon request to the Association, a member [shall] *will* be entitled to receive an appropriate certification of membership, which may be displayed in the principal office or a registered branch office of the member. The certification shall remain the property of the Association and [shall] *must* be returned by the member upon request of the NASD Board or the Chief Executive Officer of the Association.

[(c) Fraudulent or Misleading Use Prohibited]

[A member or person associated with a member shall not use the name of the Association in a fraudulent or misleading manner in connection with the promotion or sale of any security or in connection with any other aspect of the member's business or imply orally, visually, or in writing that the Association endorses, indemnifies, or guarantees a member's business practices, selling methods, or class or type of securities offered.]

[(d) Violation of Rule 2110]

[An improper, fraudulent, or misleading use of the Association's

name by a member or person associated with a member shall be deemed conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Rule 2110.]

*IM–2210–5 Requirements for the Use of Bond Mutual Fund Volatility Ratings*

(No changes to text.)

*IM–2210–6. Presentation of Mutual Fund Related Performance Information*

(Text to reflect final rule changes of SR–NASD–98–11 if approved by the Commission.) [5]

*IM–2210–7 Communications With the Public About Collateralized Mortgage Obligations (CMOs)*

*(a) Definition*

*For purposes of the following guidelines, the term ''collateralized mortgage obligation'' (CMO) refers to a multiclass debt instrument backed by a pool of mortgage pass-through securities or mortgage loans, including real estate mortgage investment conduits (REMICs) as defined in the Tax Reform Act of 1986.*

*(b) Disclosure Standards and Required Educational Material*

*(1) Disclosure Standards*

*All advertisements, sales literature and correspondence concerning CMOs:*

*(A) Must include within the name of the product the term ''Collateralized Mortgage Obligation'';*

*(B) May not compare CMOs to any other investment vehicle, including a bank certificate of deposit;*

*(C) Must disclose, as applicable, that a government agency backing applies only to the face value of the CMO and not to any premium paid; and*

*(D) Must disclose that a CMO's yield and average life will fluctuate depending on the actual rate at which mortgage holders prepay the mortgages underlying the CMO and changes in current interest rates.*

*(2) Required Educational Material*

*Before the sale of a CMO to any person other than an institutional investor, a member must offer to the customer educational material that includes the following:*

*(A) A discussion of:*

*(i) Characteristics and risks of CMOs including credit quality, prepayment rates and average lives, interest rates (including their effect on value and prepayment rates), tax considerations, minimum investments, transaction costs and liquidity;*

*(ii) The structure of a CMO, including the various types of tranches that may be issued and the rights and risks pertaining to each (including the fact that two CMOs with the same underlying collateral may be prepaid at different rates and may have different price volatility); and*

*(iii) The relationship between mortgage loans and mortgage securities;*

*(B) Questions an investor should ask before investing; and*

*(C) A glossary of terms.*

*(c) Promotion of Specific CMOs*

*In addition to the standards set forth above, advertisements, sales literature and correspondence that promote a specific security or contain yield information must conform to the standards set forth below. An example of a compliant communication appears at the end of this section.*

*(1) The advertisement, sales literature or correspondence must present the following disclosure sections with equal prominence. The information in Sections 1 and 2 must be included. The information in Section 3 is optional; therefore, the member may elect to include any, all or none of this information. The information in Section 4 may be tailored to the member's preferred signature.*

*Section 1 Title—Collateralized Mortgage Obligations*

*Coupon Rate*
*Anticipated Yield/Average Life*
*Specific Tranche—Number & Class*
*Final Maturity Date*
*Underlying Collateral*

*Section 2 Disclosure Statement:*

*''The yield and average life shown above consider prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life. Please contact your representative for information on CMOs and how they react to different market conditions.''*

*Section 3 Product Features (Optional):*

*Minimum Denominations*
*Rating Disclosure*
*Agency/Government Backing*
*Income Payment Structure*
*Generic Description of Tranche (e.g., PAC, Companion)*
*Yield to Maturity of CMOs Offered at Par*

*Section 4 Company Information:*

*Name, Memberships*
*Address*
*Telephone Number*
*Representative's Name*

*(2) Additional Conditions*

*The following conditions must also be met:*

*(A) All figures in Section 1 must be in equal type size.*

*(B) The disclosure language in Section 2 may not be altered and must be given equal prominence with the information in Section 1.*

*(C) The prepayment assumption used to determine the yield and average life must either be obtained from a nationally recognized service or the member firm must be able to justify the assumption used. A copy of either the service's listing for the CMO or the firm's justification must be attached to the copy of the communication that is maintained in the firm's advertising files in order to verify that the prepayment scenario is reasonable.*

*(D) Any sales charge that the member intends to impose must be reflected in the anticipated yield.*

*(E) The communication must include language stating that the security is ''offered subject to prior sale and price change.'' This language may be included in any one of the four sections.*

*(F) If the security is an accrual bond that does not currently distribute principal and interest payments, then Section 1 must include this information.*

*(3) Radio/Television Advertisements*

*(A) The following oral disclaimer must precede any radio or television advertisement in lieu of the Title information set forth in Section 1:*

*''The following is an advertisement for Collateralized Mortgage Obligations. Contact your representative for information on CMOs and how they react to different market conditions.''*

*(B) Radio or television advertisements must contain the following oral disclosure statement in lieu of the legend set forth in Section 2:*

*''The yield and average life reflect prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life.''*

*(4) Standardized CMO Communication Example*

*Collateralized Mortgage Obligations*
*7.50% Coupon*
*7.75% Anticipated Yield to 22-Year Average Life*
*FNMA 9532X, Final Maturity March 2023*
*Collateral 100% FNMA 7.50%*

*The yield and average life shown above reflect prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life. Please contact your*

[5] SR–NASD–98–11 was published for comment in the **Federal Register** on November 8, 2000. *See* Securities Exchange Act Release No. 43507 (November 2, 2000), 65 FR 67025.

*representative for information on CMOs and how they react to different market conditions.*
*$5,000 Minimum*
*Income Paid Monthly*
*Implied Rating/Volatility Rating*
*Principal and Interest Payments Backed by FNMA*
*PAC Bond*

*Offered subject to prior sale and price change.*

*Call Mary Representative at (800)555–1234, Your Company Securities, Inc., Member SIPC, 123 Main Street, Anytown, State 12121.*

*2211. Institutional Sales Material and Correspondence*

*(a) Definitions*

*For purposes of Rule 2210, this Rule, and any interpretation thereof:*

*(1) ''Correspondence'' consists of any written letter or electronic mail message distributed by a member to:*

*(A) one or more of its existing retail customers; and*

*(B) fewer than 25 prospective retail customers within any 30 calendar-day period.*

*(2) ''Institutional Sales Material'' consists of any communication that is distributed or made available only to institutional investors.*

*(3) ''Institutional Investor'' means any:*

*(A) person described in Rule 3110(c)(4), regardless of whether that person has an account with an Association member;*

*(B) governmental entity or subdivision thereof;*

*(C) qualified plan, as defined in Section 3(a)(12)(C) of the Act, that has at least 100 beneficiaries;*

*(D) Association member or registered associated person of such a member; and*

*(E) person acting solely on behalf of any such institutional investor.*

*No member may treat a communication as having been distributed to an institutional investor if the member has reason to believe that the communication or any excerpt thereof will be forwarded or made available to any person other than an institutional investor.*

*(4) ''Existing Retail Customer'' means any person for whom the member or a clearing broker or dealer on behalf of the member carries an account, or who has an account with any registered investment company for which the member serves as principal underwriter, and who is not an institutional investor. ''Prospective Retail Customer'' means any person who has not opened such an account and is not an institutional investor.*

*(b) Approval and Recordkeeping*

*(1) Registered Principal Approval*

*(A) Correspondence. Correspondence need not be approved by a registered principal prior to use, but is subject to the supervision and review requirements of Rule 3010(d).*

*(B) Institutional Sales Material. Each member shall establish written procedures that are appropriate to its business, size, structure, and customers for the review by a registered principal of institutional sales material used by the member and its registered representatives. Such procedures should be in writing and be designed to reasonably supervise each registered representative. Where such procedures do not require review of all institutional sales material prior to use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing institutional sales material, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to the Association upon request.*

*(2) Record-Keeping*

*(A) Members must maintain all institutional sales material in a file for a period of three years from the date of last use. The file must include the name of the person who prepared each item of institutional sales material.*

*(B) Members must maintain in a file information concerning the source of any statistical table, chart, graph or other illustration used by the member in communications with the public.*

*(c) Spot-Check Procedures*

*Each member's correspondence and institutional sales literature may be subject to a spot-check procedure under Rule 2210. Upon written request from the Advertising Regulation Department (the ''Department''), each member must submit the material requested in a spot-check procedure within the time frame specified by the Department.*

*(d) Content Standards Applicable to Institutional Sales Material and Correspondence*

*(1) All institutional sales material and correspondence are subject to the content standards of Rule 2210(d)(1) and the applicable Interpretive Materials under Rule 2210.*

*(2) All correspondence (which for purposes of this provision includes business cards and letterhead) must:*

*(A) prominently disclose the name of the member and may also include a fictional name by which the member is commonly recognized or which is required by any state or jurisdiction;*

*(B) reflect any relationship between the member and any non-member or individual who is also named; and*

*(C) if it includes other names, reflect which products or services are being offered by the member.*

*(3) Members may not use investment company rankings in any correspondence other than rankings based on (A) a category or subcategory created and published by a Ranking Entity as defined in IM–2210–3(a) or (B) a category or subcategory created by an investment company or an investment company affiliate but based on the performance measurements of a Ranking Entity.*

*(e) Violation of Other Rules*

*Any violation by a member of any rule of the SEC, the Securities Investor Protection Corporation or the Municipal Securities Rulemaking Board applicable to institutional sales material or correspondence will be deemed a violation of this Rule and Rule 2210.*

[2211] *2212.* Telemarketing

(No change to rule text.)

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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

a. Background

The proposed rule change would modernize and clarify the rules governing member communications with the public. Among other provisions, the proposed rule change would exclude all communications to institutional investors from member pre-

use approval and NASD Regulation filing requirements and from many of the content standards. Form letters and group e-mail to existing retail customers and fewer than 25 prospective retail customers also would be eligible for these exclusions, provided that a member developed appropriate policies and procedures to supervise and review such communications. Additionally, the proposed rule change would exclude independently prepared reprints from the filing and many of the content standards, and would exclude certain press releases from the filing requirements. The proposed rule change would simplify the content standards applicable to member communications.[6]

As discussed in greater detail below, the proposed rule change reflects many of the comments and suggestions received by NASD Regulation in response to Notice to Members 99–79 (''NTM 99–79''). In NTM 99–79, NASD Regulation requested comment from members and other interested parties on an earlier version of the proposed rule change (''NTM Version''). The comment period on NTM 99–79 closed on October 29, 1999. NASD Regulation received 72 comment letters in response to NTM 99–79. In developing the proposed rule change, NASD Regulation also consulted with five of its member committees, its district committees, and its National Adjudicatory Council, and considered comments received to Notice to Members 98–81, which requested comment generally on how the NASD rules and By-Laws could be modernized.

b. Description

1. Reorganization of Rule 2210

The proposed rule change would create new Rule 2211, which would apply to institutional sales material and correspondence. The creation of a separate rule for institutional sales material and correspondence should facilitate a reader's ability to determine how the advertising rules apply to those communications. In order to further simplify this process, the proposed rule change would provide cross-references between Rule 2210 and Rule 2211 in appropriate places. Existing Rule 2211, concerning telemarketing, would be renumbered as Rule 2212.

2. Definition of ''Public Appearance''

Existing Rule 2210(d)(1)(C) provides that members who engage in public appearances or speaking activities must follow the content standards of Rule 2210(d) and (f). Consequently, public appearances already are subject to strict content requirements.

The proposed rule change would clarify the application of Rule 2210 to public appearances by defining ''public appearance'' as a type of communication with the public. Public appearances would include participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public appearance or public speaking activity.

The proposed rule change also would provide members with more flexibility than they have today, by subjecting public appearances only to some, but not all of the content standards of Rule 2210. Several commenters to NTM 99–79 argued that none of the content standards should apply to public appearances. These commenters asserted that by subjecting public appearances to any of the content standards, the proposed rule change would impose impractical constraints on television and other public appearances by members.

NASD Regulation disagrees with the suggestion that statements made in public appearances should be excluded from all of the content standards. While some accommodation of the practical concerns raised by commenters may be necessary, leaving investors virtually unprotected from public statements that are misleading, unbalanced or unwarranted is not an acceptable solution. Therefore, the proposed rule change would subject public appearances to some of the content standards, while providing members with more flexibility than they have today to provide useful information in their public appearances.

In addition, by defining ''public appearance'' to include an interactive electronic forum, the proposed rule change would codify the NASD Regulation staff's position that Internet chat rooms constitute public appearances rather than advertisements or sales literature for purposes of Rule 2210.

3. Institutional Sales Material

Currently, Rule 2210 does not distinguish between retail and institutional sales material. Moreover, the rule currently defines ''sales literature'' to include any ''form letter,'' which NASD Regulation has interpreted to mean written communications, including e-mail messages, sent to at least two persons. Consequently, any communication sent to two or more institutional investors is deemed ''sales literature,'' must comply with the content standards of Rule 2210, must be pre-approved by a registered principal, and may have to be filed with the Advertising/Investment Companies Regulation Department of NASD Regulation (the ''Department'') if it concerns certain types of products, such as registered investment companies.

The proposed rule change would eliminate the pre-use approval and filing requirements applicable to communications that are distributed or made available only to institutional investors. Institutional sales material would be subject to new supervision and review requirements that are modeled on those in Rule 3010, which apply to correspondence. Moreover, institutional sales material would continue to be subject to the record-keeping requirements and some, but not all, of the content standards in Rule 2210.[7]

Under the proposed rule change, no member could treat a communication as having been distributed to an institutional investor if the member has reason to believe that the communication or any excerpt thereof will be forwarded or made available to any person other than an institutional investor. For example, if a member had reason to believe that such a communication would be forwarded or made available to 401(k) plan participants or other beneficiaries of institutional accounts, it would be treated as retail sales material. NASD Regulation believes that plan participants and other beneficiaries of institutional accounts should receive the same protections under the advertising rules as other retail investors. Similarly, an advertisement in a publication designed for broker/dealers or other institutional investors may not be treated as institutional sales material if the member has reason to believe that the publication will be made available to any person other than an institutional investor.

The proposed rule change would define ''institutional investor'' as any:

(1) Person described in Rule 3110(c)(4), regardless of whether that

[6] NASD member broker/dealers that are dually registered as investment advisers will remain subject to the advertising standards of the Investment Advisers Act of 1940 and Commission rules thereunder, to the extent that their sales material promotes advisory products or services.

[7] The proposed rule change would revise the content standards to specifically indicate which type of communication is subject to each standard. Therefore, standards that apply only to ''advertisements'' or ''sales literature'' would not apply to institutional sales material. For example, the ranking guidelines in proposed IM–2210–3 would apply only to advertisements and sales literature and therefore would not apply to institutional sales material.

person has an account with an Association member;[8]

(2) governmental entity or subdivision thereof;

(3) qualified plan, as defined in Section 3(a)(12)(C) of the Act, that has at least 100 beneficiaries;

(4) Association member or registered associated person of such a member,[9] and

(5) person acting solely on behalf of any such institutional investor.

Several elements of this definition were amended as a result of comments to NTM 99–79. First, the definition was amended to include governmental entities and their subdivisions. Second, the definition would apply to qualified plans with at least 100 beneficiaries. NASD Regulation believes that qualified plans with at least 100 beneficiaries generally have the level of sophistication and expertise to justify their treatment as institutional investors under the advertising rules. Various statutory provisions similarly distinguish these qualified plans from smaller ones.[10]

Third, the proposed rule change would define ''institutional investor'' to include any person acting solely on behalf of any institutional investor. Several commenters urged NASD Regulation to define ''institutional investor'' to include pension consultants and others acting on behalf of institutional investors. Rather than establishing a new category based upon a person's occupation, NASD Regulation has determined to include any person acting on behalf of an institutional investor.

Fourth, in response to one commenter, NASD Regulation would clarify that the term ''institutional investor'' includes only associated persons who are registered with an NASD member. The ''broker/dealer-only'' exception, which would become a part of the institutional investor definition, recognizes the special expertise that NASD members have with respect to brokerage products and services. While registered persons should have this expertise, as demonstrated by their completion of the qualifications process, there can be no assurance that other associated persons would.

Fifth, as previously mentioned, the definition would clarify that no member may treat a communication as having been distributed to an institutional investor if the member has reason to believe that the communication or any excerpt thereof will be forwarded *or made available to* any person other than an institutional investor. Thus, for example, if a member has reason to believe the employer sponsor of a retirement plan will make sales material available for inspection by the plan beneficiaries, then the member may not treat the sales material as having been distributed only to an institutional investor.

The definition of ''institutional investor'' would include persons described in Rule 3110(c)(4), which defines ''institutional account'' to include any entity with total assets of at least $50 million. Several commenters asserted that this threshold level is too high in light of the purposes of the proposed rule change, and recommended that NASD Regulation reduce it to a level such as $5 million, a level used in Regulation D under the Securities Act of 1933.

NASD Regulation has determined that the $50 million threshold is appropriate, particularly in light of the significant effect that the definition of ''institutional investor'' would have on the filing, pre-approval and content requirements. Moreover, the amendment to include qualified plans with at least 100 beneficiaries should address many of the concerns expressed by those who proposed a reduction in the asset size threshold.

4. Form Letters and Group Electronic Mail

Rule 2210 currently treats any letter or e-mail sent to more than one person as ''sales literature'' subject to the panoply of content standards applicable to all other sales literature, and to the member pre-use approval and NASD Regulation filing requirements. The use of group electronic mail has become commonplace in many firms. For example, registered representatives may provide customers with information concerning their accounts, changes in market conditions, or current economic conditions. Given the volume of form letters and group e-mail that members and their associated persons may send, and the speed with which this material can be dispatched to customers, a pre-use approval requirement may be less practical than supervisory procedures that are more specifically tailored to these forms of communication.

The proposed rule change would define ''correspondence'' to include form letters and group e-mail sent to existing retail customers and to fewer than 25 prospective retail customers within any 30 calendar-day period (''Group Correspondence''), as well as written and electronic communications prepared for delivery to a single retail customer. The proposed rule change would subject Group Correspondence to the strict supervisory procedures in Rule 3010(d), which governs the approval and review of correspondence, and to those content standards that apply to correspondence. Form letters and group e-mail sent to 25 or more prospective retail customers within any 30 calendar-day period would be subject to the pre-use approval, filing, and record-keeping requirements of Rule 2210, and to all of the content standards applicable to sales literature.[11]

NASD Regulation believes that Rule 3010(d) provides the most effective means of supervising form letters and group e-mail sent to existing and a limited number of prospective retail customers. Rule 3010(d) requires members to adopt written procedures for the review of correspondence by registered principals. Any member that does not pre-approve all correspondence must educate and train

[8] Rule 3110(c)(4), defines ''institutional account'' to mean the account of a bank, savings and loan, insurance company, registered investment company, or registered investment adviser. It also includes the amount of any other entity or natural person with total assets of at least $50 million. For purposes of Rule 2210 and Rule 2211, the term ''institutional investor'' would include trust companies organized under state law that come within the definition of ''bank'' in Article I(b) of the NASD By-Laws. In addition, the proposed rule change is not intended to require a member to verify that an investment adviser that is required to register with the SEC or a state has in fact done so, in order for the member to treat this investment adviser as an ''institutional investor.''

[9] Some commenters expressed concern about the proposal to include broker/dealer-only material within the definition of institutional sales material. These commenters asserted that currently broker/dealer-only material is excluded from the content standards of Rule 2210, and that by treating it as institutional sales material and subjecting it to some of the content standards, the proposed rule change would reduce the flexibility that members now have to place various types of information in broker/dealer-only material.

This comment reflects an apparent misunderstanding about the current scope of the content standards. Today all content standards of Rule 2210 apply to advertisements and sales literature sent only to members or their registered persons. By including this material within the definition of institutional sales material, and subjecting it only to those standards applicable to institutional sales material, the proposed rule change would provide members with more flexibility to include various information in broker/dealer-only material.

[10] *See, e.g.,* ERISA § 103(a)(3)(A) (auditing requirements) and 104(a)(2)(A) (annual reporting).

[11] The proposed rule change would permit members to treat form letters or group e-mail sent to a *combination* of existing customers and fewer than 25 prospective retail customers within any 30 calendar-day period as correspondence. Of course, members could not ''sanitize'' an advertisement or item of sales literature by enclosing it with Group Correspondence. For example, an item that a member has distributed as sales literature would remain sales literature for purposes of Rule 2210 when the member encloses it in Group Correspondence.

associated persons as to NASD rules governing communications with the public and the firm's procedures, must document this training, and must monitor adherence to these procedures. Members must retain all correspondence of registered representatives related to the member's investment banking or securities business.

Notice to Members 98–11 provides guidance to members concerning Rule 3010(d). The Notice makes clear that, at a minimum, a member must develop procedures for the review of some of each registered representative's correspondence with the public relating to the member's investment banking or securities business, tailored to its structure and the nature and size of its business and customers.

The Notice provides that members must:

- Specify in writing the firm's policies and procedures for reviewing different types of correspondence;
- Identify what types of correspondence will be pre-or post-reviewed by a registered principal; and
- Periodically re-evaluate the effectiveness of the firm's procedures for reviewing public correspondence and consider any necessary revisions.

These procedures must be reasonably designed to ensure that a member's correspondence complies with the content standards of the applicable advertising rules.

In order to ensure that its review of Group Correspondence meets these standards, a member would be expected to review its procedures to ensure that they adequately address potential concerns with the distribution of Group Correspondence. Members should consider whether to adopt stricter procedures that require registered principal pre-use approval and filing with NASD Regulation of Group Correspondence that presents a higher risk to investors. This determination should be based upon such factors as the content, purpose and targeted audience of the Group Correspondence. Thus, for example, members may wish to consider adopting procedures requiring pre-use principal review and filing as appropriate with NASD Regulation of Group Correspondence that promotes a new investment product or strategy that is sent to existing retail customers. In addition, members should strongly consider requiring pre-use principal review of Group Correspondence sent by a registered representative that has been disciplined in the past for advertising or sales practice violations.

The NTM Version would have applied a 90-day rather than a 30-day period to the determination of whether form letters and group e-mail have been sent to fewer than 25 prospective retail customers. One commenter questioned the feasibility of monitoring the issuance of form letters and group e-mail to prospective customers over a rolling 90-day period. The proposed rule change would reduce this period to 30 calendar days, to make the monitoring responsibility more manageable.

The term ''existing retail customer'' has been modified in response to comments to NTM 99–79. ''Existing retail customer'' would be defined as any person, other than an institutional investor, for whom the member or a clearing broker or dealer on behalf of the member carries an account, or who has an account with any registered investment company for which a member serves as principal underwriter. The new language would make clear that a person who has opened an account with an investment company or with a transfer agent for such an investment company could qualify as an existing retail customer. NASD Regulation also has amended the language to make it more consistent with existing Rule 2211(d).

5. Article Reprints

Rule 2210 currently defines ''sales literature'' to include ''reprints or excerpts of any . . . published article.'' Article reprints thus may have to be filed with the Department, depending upon their content, such as whether they pertain to registered investment companies. For some time, NASD Regulation has received comments that third-party article reprints should not be subject to the filing requirements of Rule 2210. Some have argued that reprints often are available to the public through large-circulation periodicals published by firms that are not NASD members, and that it makes little sense to require members to file reprints, especially when they have no control over the content of these articles. In NTM 99–79, NASD Regulation therefore proposed to exclude article reprints from the filing requirements. Several commenters to NTM 99–79 argued that article reprints also should be exempt from most of the content standards of Rule 2210.

In response to these comments, the proposed rule change would define a new type of communication with the public, an ''independently prepared reprint,'' and exclude independently prepared reprints from the filing and most of the content standards. An independently prepared reprint would consist of any article reprint that meets certain standards that are designed to ensure that the reprint was issued by an independent publisher and was not materially altered by the member. In response to comments to NTM 99–79, the proposed rule change would provide that a member may alter the contents of an independently prepared reprint in a manner necessary to make it consistent with applicable regulatory standards or to correct factual errors.

An article reprint would qualify as an ''independently prepared reprint'' under Rule 2210(a)(6)(A) only if, among other things, its publisher is not an affiliate of the member using the reprint or any underwriter or issuer of the security mentioned in the reprint. For purposes of this provision, ''affiliate'' has the same meaning as that term is defined in NASD Rule 2720(b)(1)(A) and (B). The term ''affiliate'' as used in Rule 2210(a)(6)(B) (regarding investment company research reports) also has this meaning.

Some, but not all, content standards would apply to independently prepared reprints. For example, Rule 2210(d)(1) would impose various content standards on all communications with the public, including independently prepared reprints.

The proposed rule change also would include certain investment company research reports within the definition of independently prepared reprints. Rule 2210 was recently amended to exclude these research reports from the filing requirements. Because these research reports present essentially the same issues as independently prepared reprints, the proposed rule change would subject these research reports to the same content and other requirements that apply to independently prepared reprints.

Independently prepared reprints would continue to be subject to the pre-use approval and record-keeping requirements of Rule 2210. Moreover, article reprints and research reports that do not meet the definition of ''independently prepared reprint'' would continue to constitute sales literature that would have to meet all of the requirements applicable to sales literature.

6. Press Releases

Rule 2210 defines ''sales literature'' to include ''any written or electronic communication distributed or made generally available to customers or the public,'' which the Department has interpreted to include press releases. The proposed rule change would codify this interpretation by amending the

definition of ''sales literature'' to include press releases concerning a member's product or service. The proposed rule change would exclude from the filing requirements press releases that are made available only to members of the media.[12] This exclusion would recognize the time-sensitive nature of these press releases, and the fact that press releases generally do not raise significant concerns in the filing process.

Some commenters to NTM 99–79 recommended that NASD Regulation exclude press releases from most of the content standards, or even exclude press releases from Rule 2210 entirely. Some of these commenters asserted that press releases are not part of a member's effort to market its products and services, and therefore need not be subject to Rule 2210. In fact, press releases often announce the availability of new products or services and members frequently circulate press releases to their customers with other marketing material. While NASD Regulation recognizes that the media may substantially edit a press release or even refrain from using the press release at all, we disagree with the assertion that press releases concerning a member's products or services have little to do with its marketing efforts. Consequently, the proposed rule would exempt from the filing requirements those press releases that are made available only to members of the media, but would subject them to the content, pre-use approval and record-keeping requirements of Rule 2210.

7. Television and Video Advertisements

The proposed rule change would require members that have filed a draft version or ''story board'' of a television or video advertisement pursuant to a filing requirement also to file the final filmed version within ten business days of first use or broadcast. This rule change would codify an existing Department policy regarding television and video sales material. Rule 2210 would impose a filing fee only when the draft version or story board is filed. No additional fee would be assessed when the final filmed version is filed.

8. Approval and Record-Keeping

The proposed rule change would make three additional modifications to the pre-use approval and record-keeping requirements in response to comments to NTM 99–79. First, it would clarify that the pre-use approval requirement could be met with respect to a research report concerning any debt or equity security, including non-corporate securities, by signature or initial of a supervisory analyst under New York Stock Exchange Rule 344. Second, the proposed rule change would clarify that members must maintain a file with the name of the registered principal who approved any advertisement or sales literature. Members would not be required to maintain a file with the name of the person who prepared those items, however.[13] Third, the proposed rule change would clarify that members must maintain a file with information concerning the source, but not necessarily the data, of any statistical table, chart, graph or other illustration.

9. Filing Requirements

The proposed rule change would retain the existing provision concerning the obligation of a member that has not filed an advertisement with the Department, to pre-file its advertisements for a one-year period. The NTM Version appeared to cause some confusion concerning this pre-filing obligation. The proposed rule change would modify the existing language slightly, to make it more clear and consistent with standards of plain English.

Rule 2210 does not require members who are subject to this pre-filing requirement to await completion of the Department's review of its advertisements before using them. Nevertheless, NASD Regulation encourages these members to do so, in order to better ensure that their advertisements reflect the Department's comments and that these members do not incur the expense of revising advertisements already in use.

The proposed rule change also has been modified from the NTM Version to clarify that advertisements and sales literature for continuously offered closed-end funds must be filed with the Department. This clarification codifies a long-standing position of the Department.[14]The proposed rule change would clarify that members need not file advertisements and sales literature that previously have been filed and that are to be used without material change. This provision would codify existing practice, which excludes from the filing requirement material that has been filed previously, but in which performance data is updated or there are other changes that are not material for purposes of the filing requirement. Members are encouraged to file material that is particularly aged, to ensure that the material has not fallen out of compliance due to changes in rules or other circumstances.

In response to comments received on NTM 99–79, the proposed rule change would specifically list institutional sales material as one type of communication that need not be filed. The proposed rule change also would list correspondence, independently prepared reprints, and certain press releases as other types of communications that need not be filed. In addition, the proposed rule change would state that when these items concern investment companies, then they will be deemed filed with the Association for purposes of Section 24(b) of the Investment Companies Act of 1940 and Rule 24b–3 thereunder. Based on our conversations with the SEC staff, we understand that this provision would eliminate the need to file this material with the SEC.

The proposed rule change also would exclude from the filing requirement announcements as a matter of record that a member has participated in a private placement.

Several commenters to NTM 98–81 and NTM 99–79 argued that investment company annual and semi-annual reports should be excluded from the filing requirements. These commenters note that shareholder reports are already subject to specific content requirements under SEC rules and are filed with the SEC, and argue that these requirements should address any investor protection concerns.

Members are not required to file shareholder reports that only consist of statistical reporting information such as financial statements and portfolio holdings. However, members must file the management's discussion of fund performance (''MDFP'') portion of a report (as well as any supplemental sales material attached to or distributed with the report) with the Department. In the Department's experience, members frequently use the MDFP or other supplemental information as marketing material that goes far beyond the SEC regulatory requirements for shareholder reports. While NASD Regulation carefully considered the comments

[12] The proposed rule change, unlike the NTM Version would exclude all press releases made available only to members of the media, without limiting the exclusion to press releases concerning investment companies. Some commenters to NTM 99–79 state that the limitation might create confusion concerning whether other press releases that must be filed under existing Rule 2210, such as those concerning variable products, would be similarly excluded.

[13] Proposed Rule 2211 would require members to maintain all institutional sales material in a file that includes the name of the person who prepared each item.

[14] *See, e.g.,* NASD Regulatory and Compliance Alert (April 1995) at p. 9.

suggesting an exemption for shareholder reports, we have decided not to propose such an exclusion from the filing requirement.

Several commenters to NTM 98–81 and NTM 99–79 also requested that NASD Regulation eliminate the requirement that members file a copy of the ranking or comparison used in sales material that contains rankings. These comments appear to assume that the filing is pro forma because the ranking or comparison information is reflected in the sales material itself, or that the ranking or comparison information is readily available to the Department. In fact, it is not unusual for the Department to comment on sales material that presents a ranking or comparison in a manner inconsistent with the backup ranking information. Additionally, sales material often contains rankings or comparisons that are not readily available. Because the Department relies on the backup filings when reviewing sales material that contains rankings or comparisons, elimination of this requirement could significantly delay completion of the staff's review. Accordingly, while NASD Regulation carefully considered the comments suggesting an exclusion for backup material, the proposed rule change would not eliminate this filing requirement.

Several commenters to NTM 98–81 and 99–79 also recommended that NASD Regulation eliminate the requirement to file generic mutual fund advertisements that comply with Rule 135a under the Securities Act of 1933. Members rarely file generic advertisements. To the extent the Department has received generic advertisements, however, it has found that members sometimes misunderstand the content requirements of Rule 135a, and sometimes misclassify advertising that falls under other rules as generic advertisements. We are concerned that an exclusion for generic advertisements could lead some members not to file investment company sales material that should be filed due to their misunderstanding of Rule 135a. Accordingly, NASD Regulation does not propose to exclude generic fund advertisements from the filing requirements.

10. Standards Applicable to Member Communications

The proposed rule change would substantially shorten and simplify the standards applicable to communications with the public that are contained in Rule 2210(d). The proposed rule change would relocate certain standards from Rule 2210(d) to a new Interpretive Material 2210–1, Guidelines to Ensure that Communications Are Not Misleading.[15] New proposed IM–2210–1 would make clear that members have the primary responsibility to ensure that their communications with the public are not misleading, and would rewrite many standards to make them more clear and consistent with the principles of plain English.

Proposed IM–2210–1 would not contain certain of the specific standards currently in Rule 2210. Partially in response to comments received to NTM 98–81, the proposed rule change would eliminate the specific standards regarding non-existent or self-conferred degrees or designations, offers of free service, claims for research facilities, hedge clauses, recruiting advertising, and periodic investment plans. To the extent that these provisions prohibit statements that are misleading, unbalanced, or inaccurate regarding particular types of communications, the rule already prohibits the use of such statements. Moreover, certain required disclosures, such as those currently applicable to statements concerning periodic investment plans, may not be necessary depending upon the context in which they are made.

Proposed IM–2210–1(4) in the NTM Version has been turned into new paragraphs (4) and (5) to clarify which guidelines concerning references to tax free or tax exempt income apply to all communications with the public, and which guidelines apply only to advertisements or sales literature.

11. Legends and Footnotes

Rule 2210 cautions members concerning the placement of footnotes, and in the filing review process the Department has insisted that members adopt an appropriate use of footnotes. The NTM Version would have required that material information appear in the main text of a communication and not be relegated to footnotes. Commenters expressed concern that the NTM Version would eliminate much of the flexibility that members now have concerning the placement of footnotes in specific items of sales material. Moreover, commenters noted that a requirement to include all ''material'' information in the text might have unintended litigation consequences.

The proposed rule change would attempt to balance these concerns with the need to ensure that Rule 2210 provides clear direction to members concerning their responsibility to avoid inappropriate reliance on legends and footnotes. Consequently, the proposed rule change would provide that information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication. Thus, for example, footnotes in especially small type in an advertisement might be deemed to inhibit an investor's understanding of the advertisement. Similarly, an advertisement that presents bold claims that are supposedly ''balanced'' only with footnote disclosure might not comply with this content standard.

12. Hypothetical Illustrations

The NTM Version would have deleted from Rule 2210 the statement that ''a hypothetical illustration of mathematical principles is not considered a prediction or projection of performance.'' Commenters objected to this change, arguing that this provision has permitted members to provide educational information in their sales material, and that its elimination might interfere with presentations such as a mutual fund cost calculator.

In proposed Rule 2210(d)(1)(D), NASD Regulation would insert language similar to the existing language. Under the proposed rule change, a member could present a hypothetical illustration of mathematical principles, provided that the illustration does not predict or project the performance of an investment or investment strategy and is not used in such a manner. The proposed rule change thus would permit the use of mutual fund cost calculators and other hypothetical illustrations that are permitted by existing Rule 2210.

13. Testimonials

The NTM Version would have applied specific standards to testimonials concerning ''a member's products and services.'' Commenters indicated that this change would cause confusion about whether the testimonial standards would apply even when the testimonial concerns matters other than investment performance, such as the member's general services. In order to clarify this matter, the proposed rule change would apply the testimonial standards to advertisements or sales literature concerning the investment advice or investment performance of a member or its products.

14. Recommendations

The NTM Version would have clarified certain aspects of the existing standards governing recommendations. Some commenters argued that the

[15] The current IM–2210–1 concerning collateralized mortgage obligations would be redesignated as IM–2210–7.

proposal went too far, and that it would inhibit legitimate discussion about the prospects for various investments. Nevertheless, NASD Regulation continues to share the concerns of the SEC staff and others about the need to provide investors with adequate disclosure about the financial interests that research analysts, other associated persons, or their firms may have in securities that they recommend. NASD Regulation has determined to consider this issue separately, and recently issued NTM 01–45 seeking comment on this matter. Pending the separate resolution of this rulemaking initiative, the proposed rule change would make no amendment to the existing standards governing recommendations.

15. Use and Disclosure of a Member's Name

The proposed rule change would dramatically simplify the provisions concerning disclosure of member names. In addition, the proposed rule change would make clear that the requirement to disclose the member's name applies to advertisements, sales literature, and correspondence, which for purposes of this provision would include business cards and letterhead.[16] In response to comments to NTM 99–79, the provision would clarify that the advertisement, sales literature or correspondence must ''reflect'' (rather than disclose) any relationship between the member and the other named person and the products and services offered by the member. This change would help ensure that members do not mislead investors concerning these relationships and offerings, but would not mandate disclosure that may be unnecessary to achieve this objective.

16. Ranking Guidelines

The proposed rule change would modify the ranking guidelines in several respects. First, the proposed rule change would make clear that no advertisement, item of sales literature or correspondence may present a ranking other than rankings (1) created and published by a Ranking Entity, which the ranking guidelines define to include certain independent entities, or (2) created by an investment company or an investment company affiliate but based on the performance measurements of a Ranking Entity.[17] Second, the proposed rule change would make clear that the ranking guidelines in IM–2210–3 apply only to advertisements and sales literature.

Third, the proposed rule change would permit the use of investment company family rankings even in sales material that advertises only one investment company in the family. Several commenters to NTM 99–79 urged NASD Regulation to permit the use of investment company family rankings. These types of rankings are not currently permitted under the Rule 2210, due to concern that sales material that presents a family ranking might confuse investors about the true ranking of the advertised investment company. The proposed rule change attempts to strike a balance between the interest in presenting some form of family ranking, and the need to ensure that presentations of family rankings do not mislead investors about the ranking of an individual investment company. The proposed rule change thus would permit the presentation of investment company family rankings, provided that when a particular investment company is being advertised, the individual rankings for that investment company also must be presented. The definition of ''investment company family'' is substantially similar to the definition of ''group of investment companies'' in Section 12(d)(1)(G) of the Investment Company Act of 1940. Of course, as with all performance rankings, use of an investment company family ranking would have to comply with the other applicable requirements of Rule 2210.

The proposed rule change would retain existing language concerning the required ranking periods. The NTM Version would have required rankings only for short, medium and long-term periods. Commenters to NTM 99–79 suggested that this provision would allow members to ''cherry pick'' ranking periods, to the detriment of investors. The proposed rule change would retain the existing language, but with some modifications to clarify the language and make it more consistent with principles of plain English.

The proposed rule change also would eliminate the requirement that certain disclosures appear in ''close proximity'' to any headline or other prominent statement that refers to a ranking. The subjective nature of this requirement has complicated the Department's administration of the ranking guidelines without providing meaningful additional protection to investors. The proposed rule change would eliminate certain disclosure requirements applicable to investment company rankings that are based on subcategories of funds or categories created by an investment company or its affiliate.

17. Limitations on Use of the Association's Name

The proposed rule change would simplify and shorten the requirements in IM–2210–4 concerning the use of the NASD's name. The proposed rule change also would delete current Rule 2210(d)(2)(J) concerning references to regulatory organizations.

18. Communications About Collateralized Mortgage Obligations

The proposed rule change would rewrite existing IM–2210–1 (the CMO Guidelines), which governs communications about collateralized mortgage obligations and renumber it as IM–2210–7. The current CMO Guidelines may give the impression that different standards apply to educational material, advertisements and ''communications.'' The proposed rule change would simplify, shorten and reorganize the CMO Guidelines to provide a more straightforward and uniform list of disclosure requirements.

The proposed rule change would modify the NTM Version in several respects. First, the proposed rule change would eliminate prohibitions of certain statements concerning the safety, liquidity, potential guarantees, and simplicity of CMOs. The content standards of Rule 2210, in their current form and as they would be amended, already prohibit a member from making these statements in any communication with the public. Second, the proposed rule change would make clear that paragraphs (b)(1) and (c) apply only to advertisements, sales literature and correspondence. Third, the proposed rule change would clarify that paragraph (b)(2) does not apply to the sale of a CMO to an institutional investor.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules 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.[18] NASD Regulation believes that the proposed rule change will more appropriately address the issues related to member communications with the public, will promote the safety and soundness of member firms, and will further investor protection.

[16] The requirement thus would not apply to institutional sales material.

[17] The application of this limitation to correspondence would appear in new Rule 2211(d)(3) rather than in IM–2210–3.

[18] 15 U.S.C. 78k–1(b)(6).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

See discussion of comment letters in Item II(A)(1) above.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 30 days after the expiration of the comment period following publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

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 filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 14, 2002.[19]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[19] The NASD requested a 45 day comment period and has consented to the extension of the time for Commission action on this filing until 30 days after the end of the comment period. *See* Section III.

[20] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45188; File No. SR–PCX–2001–33]**

## Self-Regulatory Organizations; Notice of filing of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. To Adopt Procedures for the Transfer of Options Positions

December 21, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 10, 2001, the Pacific Exchange, Inc. (''PCX'' 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 PCS. The Exchange amended the proposed rule change on December 11, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The PCX proposes to establish procedures for the transfer of options positions. The text of the proposed rule change, as amended, is below. Proposed new language is italicized.

Rule 6.78 (a)–(c) No change.

**Transfer of Positions**

*(d) Transfer of Positions off the Floor. ''Transfer of positions off the floor'' is defined as moving a member's ownership interest in securities from its account to an account of another member or person in a manner other than trading on the floor of a securities exchange.*

*(1) Transfers off the Floor. Notwithstanding the prohibition set forth in subsection (a), an Exchange member may transfer positions off the floor if the transfer involves one or more of the following events: (i) The dissolution of a joint account in which the remaining member assumes the positions of the joint account; (ii) the dissolution of a corporation or partnership in which a former nominee of that corporation or partnership assumes the positions; (iii) positions transferred as part of a member's capital contribution to a new joint account, partnership, or corporation; (iv) the donation of positions to a not-for-profit corporation; (v) the transfer of positions to a minor under the Uniform Gifts to Minors Act; (vi) a merger or acquisition resulting in a continuity of ownership or management; or (vii) consolidation of accounts within a member organization.*

*(2) Written Request. No member or member organization may effect a transfer of positions off the floor in any security listed on the Exchange without the prior submission of a completed written request to the Exchange. This requirement applies regardless of whether the transfer is permitted under subsection (d)(1) or (f).*

*(e) Transfer of Positions Offered on the Floor. ''Transfer of positions offered on the floor'' is defined as moving a member's ownership interest in securities from its account to an account of another member or person in circumstances other than those set forth in subsection (d)(1).*

*(1) Transfer Procedure for Positions Offered on the Floor. A member seeking a transfer must offer the positions on the floor in the following manner:*

*(A) A member or member organization seeking to transfer positions on the floor (''Transferor'') must specify the securities positions to be transferred that are traded on the Exchange or at another securities exchange (''Transfer Positions''). In offering Transfer Positions to the floor, the Transferor must offer a set of options or other financial products being offered by the Transferor as a package (''Transfer Package''), to be bid upon at a net debit or credit for the entire Transfer Package. A single Transfer Package must include no more than one option issue listed on the Exchange, but may also include stock or other securities. A Transferor may offer multiple Transfer Packages on the floor at the same time or on the same day. These offers must be made in a form*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter dated December 10, 2001 from Cindy Sink, Senior Attorney, Regulatory Policy, PCX, to Joe Morra, Special Counsel, Division of Market Regulation, Commission and attachments (''Amendment No. 1''). In Amendment No. 1, the PCX: (1) Clarified the intent of the rule that after the proper request has been completed, a transfer will be automatically permitted when the transfer satisfies one of the specified categories set forth in proposed Rule 6.78(d)(1); (2) revised Item 8 to state that the proposed rule change is based, in part, on Chicago Board Options Exchange Rule 6.49A; and (3) made technical changes to the rule text.

*and manner prescribed by the Exchange.*

*(F) Acceptance of the best bid or offer (''BBO'') creates a binding contract under Rule 6.77. The Transferor is not obligated to accept the BBO. If the Transferor does not accept the BBO, the Transferor may request an exemption pursuant to paragraph (f) of this Rule, or may offer the Transfer Package(s) (or the Transfer Positions in any other allowable combination) on the floor the next day pursuant to the procedures in this Rule. If the Transferor decides not to accept a BBO on a second day, the Transferor must request permission of two Floor Officials to offer the Transfer Positions on any subsequent day(s).*

*(G) The ''Request Response Time'' for a ''Request for Quotes'' for Transfer Packages is two hours. The transferor may apply to two Floor Officials to have a Request Response Time for a transfer procedure that is less than two hours, where the Transfer Package is not complicated, or that is greater than two hours, where the complexity of the particular Transfer Package warrants the additional time.*

*(H) A Request for Quotes that is to be submitted later than 11:00 a.m. Pacific Time must have the approval of two Floor Officials. In no event may a Request for Quotes be submitted to the floor later than 12:30 p.m. Pacific Time.*

*(I) The Transferor may accept a bid or offer for one or more of the Transfer Packages he/she has offered on the floor, if the accepted bid or offer for the combination of the Transfer Packages is equal to or better than the total of the individual BBOs for the particular Transfer Package combination and equal to or greater than any bid or offer for the same combination of Transfer Packages.*

*(J) All transactions (including stock positions or other positions that must be transacted on another exchange) required to be completed in order to effectuate the transfer of the Transfer Package must be completed in time for the option portion to be transacted by the end of the trading day.*

*(K) If equal bids or offers are received for a Transfer Package at a price accepted by the Transferor, the Transfer Package will be divided equally among all members submitting the bids or offers to the extent possible unless the parties submitting the bids or offers agree to a division in another manner. Two Floor Officials will resolve Transfer Package division disputes.*

*(f) Exemptions. The Exchange's Chief Executive Officer or designee thereof may grant an exemption from the requirements of subsection (e), upon that person's own motion or upon application of a Transferor, when, in the judgment of the Chief Executive Officer or designee, the market value of the Transferor's business will be compromised by having to comply with subsection (e) or when, in the judgment of the Chief Executive Officer or designee market conditions make position transfer offers on the floor impractical. The Chief Executive Officer or designee will consider effects on open interest and other factors deemed necessary to ensure fair and orderly market conditions.*

Commentary:

.01 No change.

*.02 Acquisitions and dissolutions which all or substantially all of the assets of one member or member organization are required by another or, where there remains no continuity of ownership or management are examples of situations that normally would be required to be subjected to the transfer process set forth in subsections (e) and (f). This list is not meant to be exhaustive, however, and there may be other situations in which there is a discontinuation of ownership or management of the positions that may require that the positions be brought to the floor for transfer. Questions on whether a transfer should be brought to the floor may be directed to the Exchange's Options Surveillance Department.*

*.03 To the extent applicable, all other Exchange rules, including Rule 6.49, Solicited Transactions, will apply to the transfer procedure set forth in subsections (d) through (f). The following Rules do not apply to transfer procedures: 6.71 (Meaning of Premium Bids and Offers); 6.74 (Bids and Offers in Relation to Units of Trading); 6.75 (Priority of Bids and Offers); 6.76 (Priority of Split Price Transactions); 6.47 (''Crossing'' Orders and Stock/Option Orders); and 7.9 (Meaning of Premium Bids and Offers, Index Options).*

*.04 The procedure established by subsections (d) through (f) may also be used by Market Makers who, for reasons other than a forced liquidation, such as an extended vacation, wish to liquidate their entire, or nearly their entire position in a single set of transactions. However, this procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process.*

## 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 PCX 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 PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to establish which position transfers may occur off the floor and which position transfers must be offered to the floor.[4] All transfers require a written request to the Exchange. To initiate transfers, the member submits a written request to the Financial and Operational Compliance Department (''FOCD'').

(1) *Transfer of Positions off the Floor.* Transfers involving the following will be approved by the FOCD:

(A) Joint account dissolution with remaining member assuming the positions;

(B) Business dissolution with a former nominee assuming the positions;

(C) Positions transferred as capital contribution to a new joint account, partnership, or corporation;

(D) Donation of positions to a not-for-profit corporation;

(E) Transfer to a minor under the Uniform Gifts to Minors Act;

(F) Merger or acquisition with continuity of ownership or management; or

(G) Accounts consolidation within a member organization.

Transfers that fall under one or more of these seven categories ((A) through (G)) that submit the proper request information qualify for transfer off the Floor. However, the transferor may elect to present to the floor.

(2) *Transfer of Positions Offered on the Floor.* Transfers not involving one of the above seven categories ((1)(A) through (G)) will be sent to the Options Surveillance Department (OSD'') by the FOCD for assistance in offering the transfer to the floor. When a transfer is offered to the floor, the procedure detailed in proposed subsection (e) applies. Specifically, a member or member organization seeking to transfer positions on the floor (''Transferor'') must specify the securities positions to be transferred that are traded on the Exchange or at another securities

[4] The rule is based, in part, on the Chicago Board Options Exchange Rule 6.49A.

exchange (''Transfer Positions''). In offering Transfer Positions to the floor, the Transferor must offer a set of options or other financial products being offered by the Transferor as a package (''Transfer Package''), to be bid upon at a net debit or credit for the entire Transfer Package. A single Transfer Package must include no more than one option issue listed on the Exchange, but may also include stock or other securities. A Transferor may offer multiple Transfer Packages on the floor at the same time or on the same day. These offers must be made in a form and manner prescribed by the Exchange.

A Transfer Package consisting solely of positions in one option issues and no other securities will be offered by the Transferor at the post at which that option issue is traded (''Post-Specific Transfer Packages''). Post-Specific Transfer Package must be individually priced and reported. Post-Specific Transfer Packages are subject to the ordinary procedures for trading options, and not those set forth in proposed subsection (e), unless a bid or offer is made for a combination of Transfer Packages pursuant to proposed subsection (e)(1)(I).

A Transfer Package consisting of positions in an option issue and other financial instruments must be offered at the FLEX Post. In addition, notice must be given to the order book official (''OBO'') of each post (or the lead market maker for the particular issue, as appropriate) where a component of the Transfer Package trades. The OBO will announce the pending transfer of positions prior to the offer being made at the FLEX post.

A member submitting a Transfer Package must designate a member of the Exchange (''Transferor Designeer'') to represent the order on the floor. The Transferor Designee must be available to answer questions regarding the Transfer Package during the entire Request Response Time (as defined in proposed subsection (e)(1)(G)).

To the extent applicable and as modified by proposed subsection (e), Transfer Packages offered at the FLEX post will be subject to the procedures set forth in PCX Rule 8.103 (FLEX Trading Procedures and Principles) paragraphs (a) through (c).

Acceptance of the best bid or offer (''BBO'') creates a binding contract under PCX Rule 6.77. The Transferor is not obligated to accept the BBO. If the Transferor does not accept the BBO, the Transferor may request an exemption pursuant to proposed subsection (f), or may offer the Transfer Package(s) (or the Transfer Positions in any other allowable combination) on the floor the next day pursuant to the procedures in proposed subsection (d). If the Transferor decides not to accept a BBO on a second day, the Transferor must request permission of two Floor Officials to offer the Transfer Positions on any subsequent day(s).

The ''Request Response Time'' for a ''Request for Quotes'' for Transfer Packages is two hours. The Transferor may apply to two Floor Officials to have a Request Response Time for a transfer procedure that is less than two hours, where the Transfer Package is not complicated, or that is greater than two hours, where the complexity of the particular Transfer Package warrants the additional time.

A Request for Quotes that is to be submitted later than 11:00 a.m. Pacific Time must have the approval of two Floor Officials. In no event may a Request for Quotes be submitted to the floor later than 12:30 p.m. Pacific Time.

The Transferor may accept a bid or offer for one or more of the Transfer Packages he/she has offered on the floor, if the accepted bid or offer for the combination of the Transfer Package is equal to or better than the total of the individual BBOs for the particular Transfer Package combination and equal to or greater than any bid or offer for the same combination of Transfer Packages.

All transactions (including stock positions or other positions that must be transacted on another exchange) required to be completed in order to effectuate the transfer of the Transfer Package must be completed in time for the option portion to be transacted by the end of the trading day.

If equal bids or offers are received for a Transfer Package at a price accepted by the Transferor, the Transfer Package will be divided equally among all members submitting the bids or offers to the extent possible unless the parties submitting the bids or offers agree to a division in another manner. Two Floor Officials will resolve Transfer Package division disputes.

The Exchange's Chief Executive Officer or designee thereof may grant an exemption from the requirement of proposed subsection (e), upon that person's own motion or upon application of a Transferor, when, in the judgment of the Chief Executive Officer or designee, the market value of the Transferor's business will compromised by having to comply with proposed subsection (e) or when, in the judgment of the Chief Executive Officer or Designee market conditions make position transfer offers on the floor impractical. The Chief Executive Officer or designee will consider effects on open interest and other factors deemed necessary to ensure fair and orderly market conditions.

2. Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, because it is designed to promote just and equitable principles of trade, to enhance competition and to 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, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change 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 (ii) as to which the PCX consents, the Commission will:

(A) By order approve the proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, 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, as amended,

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2001–33 and should be submitted by January 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–32083 Filed 12–28–01; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45182; File No. SR–PHLX–2000–20]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to the Trading of Nasdaq Securities on the Floor of the Exchange

December 20, 2001.

### I. Introduction

On November 16, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] a proposed rule change regarding the trading of Nasdaq securities on the floor of the Exchange, pursuant to unlisted trading privileges (''UTP''). Notice of the proposed rule change was published in the **Federal Register** on December 14, 2000.[3] On May 14, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] Amendment No. 1 was published in the **Federal Register** on July 16, 2001.[5] On June 22, 2001, the Exchange submitted Amendment No. 2 to the proposed rule change.[6] The Commission received two comment letters on the proposed rule change and a response from Phlx.[7] This order approves the proposed rule change, as amended.

### II. Description of the Proposal

The Phlx proposes to reinstate trading in certain over-the-counter (''OTC'') securities, *i.e.,* Nasdaq National Market Securities (''Nasdaq/NM Securities''), on the floor of the Exchange, pursuant to UTP under section 12(f) of the Act.[8] Therefore, Phlx seeks reinstatement of the pilot program and accompanying rules to permit the trading of Nasdaq/NM Securities on the Exchange pursuant to UTP (''Phlx OTC/UTP Pilot Program'' or ''Pilot'').[9] Generally, the Exchange proposes to make only minor changes to the Phlx rules that specifically govern trading of Nasdaq/NM Securities, such as to revise the term ''Nasdaq/NM Securities.'' The Phlx has, however, proposed a new allocation procedure for Nasdaq/NM Securities. The Phlx has proposed to reinstate its Pilot to trade Nasdaq/NM Securities on a six-month pilot basis.

### III. Summary of Comments

The Commission received two comments on the proposed rule change and a response from Phlx.[10] One commenter, Knight, opposed the proposal. In its letter, Knight argued that the proposal should not be approved because: (1) Phlx has failed to demonstrate how permitting Phlx specialists to trade certain Nasdaq/NM Securities pursuant to the Pilot will maintain fair and orderly markets (as required by section 12(f)(1)(E)(i) of the Act[11]) (of particular concern to Knight is the fact that members of regional UTP exchanges will be held to the less stringent rules of regional exchanges than NASD market maker members); (2) members of regional UTP exchanges trading Nasdaq/NM Securities currently act in a manner inconsistent with the SEC Rule 11Ac1–1[12] (the ''Firm Quote Rule''), by failing to execute transactions at prices that were displayed in the Nasdaq Montage; and (3) members of regional UTP exchanges trading Nasdaq/NM Securities currently act in a manner inconsistent with NASD's Locked/Crossed Market Rule[13] and Trade-or-Move Rule.[14]

The Phlx responded to the Knight Letter. In its response letter, the Phlx countered each of Knight's arguments by contending that: (1) The SEC has already determined that permitting regional exchanges and their specialists and dealers to trade Nasdaq/NM Securities pursuant to the OTC/UTP Plan[15] is consistent with fair and orderly markets; (2) the Knight Letter offers no evidence that members of regional UTP exchanges routinely violate the Firm Quote Rule; and (3) even through regional exchange specialists are not bound by the NASD's Locked/Crossed Market and Trade-or-Move Rules, regional specialists on a voluntary basis routinely comply with Trade-or-Move messages received by them pre-opening. Moreover, the Phlx noted that it does not intend to trade or quote during the pre-opening session.

The other commenter, Ashton, supported the proposal. Ashton operates the eVWAP trading system (''eVWAP'') as a facility of the Phlx through its Universal Trading Technologies Corporation subsidiary. eVWAP is a pre-opening order matching session for the electronic execution of large-sized stock orders at a standardized volume weighted average price. Ashton noted that the Phlx soon will be filing amendments to Phlx Rule 237 (The eVWAP Morning Session) to expand eligibility of certain Nasdaq/NM

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 43692 (Dec. 8, 2000), 65 FR 78240.

[4] *See* Form 19b–4 dated May 14, 2001 (''Amendment No. 1'').

[5] Securities Exchange Act Release No. 44533 (July 10, 2001), 66 FR 37083.

[6] *See* letter from Diana Tenenbaum, Phlx, to Nancy J. Sanow, Senior Special Counsel [sic], Division of Market Regulation, SEC, dated June 21, 2001 (''Amendment No. 2''). In Amendment No. 2, the Exchange corrected a citation to SEC ''Rule 11Ac1–1'' on page 22 of the amended Form 19b–4, deleted a reference to subsection ''(ii)'' on page 25 of the amended Form 19b–4, and changed all references to ''issue'' and ''issues'' in the proposed Rule 516 to read ''security'' and ''securities,'' respectively.

[7] *See* letters to Jonathan G. Katz, Secretary, SEC, from Michael T. Dorsey, Senior Vice President and General Counsel, Knight Trading Group, Inc., dated December 19, 2000 (''Knight Letter''); William W. Uchimoto, Executive Vice President and General Counsel, Ashton Technology Group, Inc., dated February 23, 2001 (''Ashton Letter''); and Edith Hallahan, Deputy General Counsel, Phlx, dated April 2, 2001 (''Phlx Letter'').

[8] 15 U.S.C. 781(f).

[9] The Commission notes that the Phlx began trading Nasdaq/NM Securities pursuant to the Pilot in February 1993. *See* Securities Exchange Act Release No. 31672 (Dec. 30, 1992), 58 FR 3054 (Jan. 7, 1993). The effectiveness of the Pilot was extended four times before the Phlx decided to cease trading such securities pending reorganization of its OTC/UTP Pilot Program as a whole. *See* Securities Exchange Act Release No. 36087 (Aug. 10, 1995), 60 FR 42637, 42638 (Aug. 16, 1995). The Phlx OTC/UTP Pilot Program expired on February 12, 1996. *Id.*

[10] *See* note 7 *supra.*

[11] 15 U.S.C. 781(f)(1)(E)(i).

[12] 17 CFR 240.11Ac1–1.

[13] NASD Rule 4613(e).

[14] NASD Rule 4613(b)(2).

[15] The OTC/UTP Plan refers to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis. The participants of the OTC/UTP Plan are the American Stock Exchange LLC, the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the National Association of Securities Dealers, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

Securities to eVWAP. Ashton stated that many eVWAP participants have requested the addition of Nasdaq issues for eVWAP matching.

Ashton also responded to the Knight Letter. In the Ashton Letter, Ashton counters two of Knight's arguments by contending that: (1) The SEC has already determined that UTP trading of Nasdaq/NM securities is in furtherance of fair and orderly markets; and (2) the federal statutory and regulatory scheme dictates that self-regulatory organizations' rules govern their own members (Ashton questions whether Knight is requesting a complete overhaul of the Act to impose a single self-regulatory, NASDR, over all market participants trading Nasdaq/NM Securities).

## IV. Discussion

The Commission finds that the proposed rule change, as needed, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of section 6(b)(5) of the Act.[16] The Commission believes that Phlx has proposed rules that should ensure that trading in Nasdaq/NM Securities on its floor occurs in an orderly fashion,[17] consistent with the requirements of the Act. The Commission, therefore, believes that the proposal should remove impediments to and perfect the mechanism of a free and open market in a manner that is consistent with the protection of investors and the public interest.[18] The Commission also notes that Phlx's response to the comments raised in the Knight Letter were sufficient.[19]

Furthermore, the proposed rule change is consistent with section 12(f)(2) of the Act,[20] which grants the Commission explicit authority to approve UTP in OTC securities. Section 12(f)(2) of the Act requires the Commission, before approving UTP, to determine that the granting of UTP is consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission believes that the proposed rule change is consistent with these goals and thus, the Commission is approving the proposed rule change, subject to the Phlx complying with the requirements of the OTC/UTP Plan.

## V. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[21] that the proposed rule change (SR–Phlx–2000–20), as amended, is approved on a pilot basis effective for a six month period beginning on the date trading begins.[22]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–32031 Filed 12–23–01; 8:45 am]

BILLING CODE 8010–01–M

[16] 15 U.S.C. 78f(b)(5).

[17] The Commission notes that trading in Nasdaq/NM Securities will occur on the Phlx's equity floor, which is separate from the Phlx's options floor. Therefore, Phlx's proposal does not raise any side-by-side trading concerns. In addition, Phlx Rule 1014, which prohibits Registered Options Traders (''ROTs'') from executing proprietary options transactions in Phlx-listed options on OTC securities, if, during the preceding hour, the ROT was physically at the trading post where such OTC security trades, will apply during the Pilot.

[18] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] The Commission notes that the Phlx's rules regarding short sales do not require an exemption from the Commission's short sale rule, Rule 10a–1, since Nasdaq securities currently are excluded from the Rule. *See* CFR 240.10a–1(a)(ii), However, Nasdaq has applied to become a national securities exchange. *See* Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001). If Nasdaq becomes a registered exchange, Nasdaq securities will be exchange-listed and the exemption in subparagraph (ii) of Rule 10a–1 will no longer be available. Accordingly, trading in Nasdaq securities would be subject to Rule 10a–1 unless Phlx obtains an exemption from the Rule. The Commission notes that Nasdaq has requested an exemption from Rule 10a–1.

[20] 15 U.S.C. 781(f)(2).

[21] 15 U.S.C. 78s(b)(2).

[22] Phlx has advised the Commission that it expects to begin trading in January 2002.

[23] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45178; File No. SR–PHLX–00–68]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1, 2, and 3 by the Philadelphia Stock Exchange, Inc. Related to Generic Listing Standards Applicable to Trust Shares Pursuant to Rule 19–4(e) Under the Securities Exchange Act of 1934

December 20, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 7, 2000, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PHLX. The PHLX filed Amendment Nos. 1, 2, and 3 to the proposal on September 7, 2000,[3] September 12, 2001,[4] and December 18, 2001,[5] respectively. The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, PHLX, to Nancy Sanow, Division of Market Regulation (''Division''), Commission, dated September 26, 2000 (''Amendment No. 1''). In Amendment No. 1, the PHLX indicated that in the event the PHLX proposes to list and trade a series of Trust Shares that do not satisfy the generic criteria provided in the proposal, the PHLX will submit to the Commission a proposed rule change pursuant to Rule 19b–4 with respect to the series.

[4] *See* letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, PHLX, to Yvonne Fraticelli, Special Counsel, Division, Commission, dated September 12, 2001 (''Amendment No. 2''). Amendment No. 2 indicates that: (1) The PHLX currently does not list any Trust Shares, although it trades shares of the Nasdaq 100 Trust pursuant to unlisted trading privileges (''UTP''); (2) the PHLX is amending PHLX Rule 803(i)(11)(e) to indicate that the minimum trading increment for a series of Trust Shares will be $0.01; (3) the PHLX will issue a circular to members for each Trust Shares series listed pursuant to Rule 19b–4(e) under the Act, which will describe the unique characteristics and risks of Trust Shares, and inform members of any obligation to deliver a written product description or prospectus, as applicable to purchasers of Trust Shares, and inform members of their responsibilities under PHLX Rules 746, ''Diligence as to Accounts,'' and 747, ''Approval of Accounts,'' in connection with customer transactions in Trust Shares; (4) Trust Shares are subject to, among others, the PHLX's general agency-auction rules, trading rules, clearance and settlement rules, equity margin rules, priority, parity, and precedence rules, rules governing the responsibilities of specialists, trading halt rules and procedures, and account opening requirements; (5) any series of Trust Shares traded pursuant to the standards in PHLX Rule 803(i)(11) must meet the eligibility criteria in PHLX Rule 803(i)(11) as of the date of the initial deposit of securities and cash into the trust; (6) the initial deposit of a specified portfolio of securities in connection with the issuance of shares of a series of Trust Shares must be made before the start of trading on the PHLX; (7) unless the PHLX maintains an index, the current index value will be disseminated every 15 seconds over the Consolidated Tape Association's (''CTA'') Network B by or through the primary exchange or an entity working with that exchange; and (8) Trust Shares are subject to PHLX Rules 133, ''Trading Halts Due to Extraordinary Market Volatility,'' and 136, ''Trading Halts in Certain Exchange Traded Funds.''

[5] *See* letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, PHLX, to Yvonne Fraticelli, Special Counsel, Division, Commission, dated December 17, 2001 (''Amendment No. 3''). In Amendment No. 3, the PHLX revised the text of PHLX Rule 803(i)(11) to indicate: (1) that the provisions of PHLX Rule 803(i)(11) apply to Trust Shares listed or traded pursuant to UTP; and (2) that the minimum trading increment for Trust Shares will be $0.01. In addition, in Amendment No. 3 the PHLX represented that it will use its existing surveillance procedures for Trust Shares to monitor trading in Trust Shares traded pursuant to Rule 19b–4(e). Amendment No. 3 also stated that the PHLX will issue a circular to members for each Trust Shares series listed or traded on a UTP basis pursuant to Rule 19b–4(e) under the Act, and reiterated the

publishing this notice to solicit comments on the proposed rule change and on Amendment Nos. 1, 2, and 3 from interested persons and to approve the proposal, as amended, on an accelerated basis.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend PHLX Rule 803(i), ''Trust Shares,'' by adopting PHLX Rule 803(i)(11), which will provide standards to permit the trading, whether by listing or pursuant to UTP, of Trust Shares pursuant to Rule 19b–4(e) under the Act.[6]

The text of the proposed rule change is available at the PHLX and at the Commission.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 III below. The PHLX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

PHLX Rule 803(i) accommodates the trading on the PHLX of Trust Shares, which represent interests in a unit investment trust (''Trust'') that operates on an open-end basis and holds a portfolio of securities. Each Trust is designed to provide investors with an instrument that closely tracks the underlying securities portfolio, trades like a share of common stock, and pays to holders of Trust Shares periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less expenses, as described in the applicable Trust prospectus.

The PHLX proposes to amend PHLX Rule 803(i) by adopting proposed PHLX Rule 803(i)(11), which will provide standards to permit the listing and trading, including trading on a UTP basis, of Trust Shares pursuant to rule 19b–4(e) under the Act. Rule 19b–4(e) states that the listing and trading of a new derivative securities product by a SRO shall not be deemed a proposed rule change if the Commission has approved, pursuant to Section 19(b) of the Act,[7] the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class.[8]

The PHLX adopted PHLX Rule 803(i) to permit the listing and trading of Trust Shares.[9] Under PHLX Rule 803(i), the PHLX had anticipated filing proposed rule changes pursuant to Rule 19b–4 under the Act for each series of Trust Shares to be traded on the PHLX. The PHLX now believes, however, that the adoption of proposed PHLX Rule 803(i)(11) will further the intent of PHLX Rule 803(i) by facilitating the commencement of trading in Trust Shares, subject to the generic standards for Trust Shares in proposed PHLX Rule 803(i)(11), without the need for notice and comment and Commission approval under Section 19(b) of the Act. The PHLX believes that this has the potential to reduce the time frame for bringing Trust Shares to market.

The PHLX proposes that Trust Shares listed or traded on a UTP basis pursuant to Rule 19b–4(e) be subject to the specific generic criteria set forth in proposed PHLX Rule 803(i)(11). The PHLX notes that all other provisions of PHLX Rule 803(i) would continue to apply to such securities.

Proposed PHLX Rule 803(i)(11) sets forth generic listing criteria that are intended to ensure that a substantial portion of the weight of an index or portfolio underlying Trust Shares is accounted for by stocks with substantial market capitalization and trading volume. Proposed PHLX Rule 803(i)(11) provides that, upon the initial listing of a series of Trust Shares pursuant to Rule 19b–4(e), the component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio must have minimum market value of at least $75 million. In addition, the component stocks in the index or portfolio must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio.

The most heavily weighted component stock in an underlying index cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio. The underlying index or portfolio must include a minimum of 13 stocks, which is the minimum number to permit qualification as a regulated investment company under subchapter M of the Internal Revenue Code. All securities in an underlying index or portfolio must be listed on a national securities exchange or the Nasdaq Stock Market (including the Nasdaq SmallCap Market).

Any series of Trust Shares traded pursuant to the standards in proposed PHLX Rule 803(i)(11) must meet the eligibility criteria in proposed PHLX Rule 803(i)(11) as of the date of the initial deposit of securities and cash into the trust.[10] The PHLX will request issuers of a series of Trust Shares listed under PHLX Rule 803(i)(11) to represent to the PHLX that the index or portfolio of securities underlying the series will comply with the applicable eligibility criteria as of the date of the initial deposit.[11]

Proposed PHLX Rule 803(i)(11) provides that the underlying index will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar, or modified equal-dollar weighting methodology. In addition, if the index is maintained by a broker-dealer, the broker-dealer must erect a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer. The current index value must be disseminated every 15 seconds over the CTA's Network B.[12]

The Reporting Authority[13] will disseminate for each series of Trust

statements made in Amendment No. 2 concerning the information that the circular will provide.

[6] 17 CFR 240.19b–4(e). Rule 19b–4(e) under the Act permits self-regulatory organizations (''SROs'') to list and trade new derivatives products that comply with existing SRO trading rules, procedures, surveillance programs and listing standards without submitting a proposed rule change under section 19(b) of the Act. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (''1998 Release'').

[7] 15 U.S.C. 78s(b).

[8] *See* 1998 Release, *supra* note 6.

[9] *See* Securities Exchange Act Release No. 43717 (December 13, 2000), 65 FR 80976 (December 22, 2000) (order approving File No. SR–PHLX–00–54) (''Trust Shares Order''). The PHLX currently does not list any Trust Shares. The PHLX trades shares of the Nasdaq 100 Trust on a UTP basis pursuant to the Trust Shares Order. *See* Amendment No. 2, *supra* note 4.

[10] *See* Amendment No. 2, *supra* note 4.

[11] *See* Amendment No. 2, *supra* note 4.

[12] Unless the PHLX maintains the index, the PHLX understands that the primary exchange or another entity working with that exchange will disseminate the current value of the index. *See* Amendment No. 2, *supra* note 4.

[13] The Reporting Authority with respect to a series of Trust Shares is the PHLX, a wholly-owned subsidiary of the PHLX, an institution (including the Trustee for Trust Shares), or a reporting service designated by the PHLX or its subsidiary or by the

Continued

Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon the index value or upon current information regarding the required deposit of securities and cash to permit creation of new shares of the series.

Proposed PHLX Rule 803(i)(11)(d) provides that a minimum of 100,000 shares of a series of Trust Shares must be outstanding at the start-up of trading.[14] The PHLX believes that this minimum number will be sufficient to establish a liquid PHLX market at the start of trading.

The minimum trading increment for a series of Trust Shares will be $0.01.[15]

The original listing fee for each series of Trust Shares will be $7,500, with an annual maintenance listing fee of $1,250.

The PHLX represents that it will implement written surveillance procedures for Trust Shares and that it will use its existing surveillance procedures for Trust Shares to monitor trading in Trust Shares traded pursuant to Rule 19b–4(e).[16] In addition, the PHLX states that it will comply with all of the recordkeeping requirements of Rule 19b–4(e) and that it will file Form 19b–4(e) for each series of Trust Shares listed under Rule 19b–4(e) within five business days of the commencement of trading.

The provisions of PHLX Rule 803(i)(11) will apply to all series of Trust Shares listed or traded on a UTP basis pursuant to Rule 19b–4(e). In addition to the requirements of proposed PHLX Rule 803(i)(11), Trust Shares also will be subject to other PHLX rules. Specifically, the PHLX notes that dealings in Trust Shares on the PHLX are conducted pursuant to the PHLX's general agency-auction trading rules.[17] In addition, Trust Shares are subject to, among others, the general dealing and settlement rules of the PHLX, including the PHLX's rules on clearance and settlement of securities transactions and the PHLX's equity margin rules; the PHLX's rules governing priority, parity, and precedence of orders; the PHLX's rules regarding responsibilities of the specialist; and the PHLX's account opening requirements.[18]

Trust Shares also are subject to PHLX Rule 133, ''Trading Halts due to Extraordinary Market Volatility,'' and PHLX Rule 136, ''Trading Halts in Certain Exchange Traded Funds.'' [19] In exercising discretion under PHLX Rule 136, PHLX officials may consider a variety of factors, including the extent to which trading has been halted or suspended in the market that is the primary market for a plurality of the underlying stocks, and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[20]

The PHLX will issue a circular to members for each series of Trust Shares listed, or traded on a UTP basis, pursuant to Rule 19b–4(e).[21] The circular will describe the unique characteristics and risks of Trust Shares and will inform members of any obligation to deliver a written product description or prospectus, as applicable, to purchasers of Trust Shares.[22] The circular will inform members of their responsibilities under PHLX Rule 746, ''Diligence as to Accounts,'' and PHLX Rule 747, ''Approval of Accounts,'' in connection with customer transactions in Trust Shares.[23]

(2) Basis

The PHLX believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received with respect to the proposed rule change.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change and Amendment Nos. 1, 2, and 3 are 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 filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to file number SR–PHLX–00–68 and should be submitted by January 22, 2002.

## IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The PHLX has asked the Commission to approve the proposal on an accelerated basis because the PHLX has proposed standards for Trust Shares that are substantially similar to those adopted by the American Stock Exchange, LLC (''Amex'') for the listing and trading of Portfolio Depository Receipts (''PDRs'') pursuant to Rule 19b–4(e).[24] The PHLX does not believe that its proposal presents any new investor protection issues that were not addressed during the notice and comment period for the Amex's

exchange that lists a particular series of Trust Shares (if the PHLX is trading a series of Trust Shares pursuant to UTP) as the official source for calculating and reporting information relating to the series, including any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the Trust in connection with the issuance of Trust Shares; the amount of any dividend equivalent payment or cash distribution to holders of Trust Shares, net asset value or other information relating to the creation, redemption, or trading of Trust Shares. *See* PHLX Rule 803(i)(1)(ii).

[14] The initial deposit of a specified portfolio of securities in connection with the issuance of the minimum of 100,000 shares of a series of Trust Shares must be made before the start of trading on the PHLX. *See* Amendment No. 2, *supra* note 4.

[15] *See* Amendment Nos. 2 and 3, *supra* notes 4 and 5.

[16] *See* Amendment No. 3, *supra* note 5.

[17] *See* Amendment No. 2, *supra* note 4.

[18] *See* Amendment No. 2, *supra* note 4.

[19] *See* Amendment No. 2, *supra* note 4.

[20] *See* Amendment No. 2, *supra* note 4.

[21] *See* Amendment Nos. 2 and 3, *supra* notes 4 and 5.

[22] *See* Amendment Nos. 2 and 3, *supra* notes 4 and 5.

[23] *See* Amendment Nos. 2 and 3, *supra* notes 4 and 5.

[24] *See* Amex Rule 1000, Commentary .03. *See also* Securities Exchange Act Release No. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (order approving File No. SR–Amex–00–14) (''Amex Order''). The Amex Order also approved standards to permit the listing and trading of Index Fund Shares pursuant to the Rule 19b–4(e).

proposal to provide standards to permit the listing and trading of PDRs pursuant to Rule 19b–4(e).

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 and, in particular, with the requirements of Section 6(b)(5) of the Act[25] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.[26]

Trust Shares are securities that are interests in a Trust that holds a portfolio of securities linked to an index. Each Trust is designed to provide investors with an instrument that closely tracks the underlying portfolio of securities, trades like a share of common stock, and pays holders of the instrument periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses, as described in the Trust prospectus.[27]

As noted above, the Commission previously approved a PHLX proposal that permits the listing and trading, or trading pursuant to UTP, of Trust Shares on the PHLX.[28] In approving these securities of trading, the Commission considered the structure of these securities, their usefulness to investors and to the markets, and the PHLX rules that govern their trading. The Commission's approval of the current proposal, which establishes generic listing standards for Trust Shares, will allow series of Trust Shares that satisfy the generic listing standards in PHLX Rule 803(i)(11) to begin trading under Rule 19b–4(e) without the need for notice and comment and Commission approval. As noted above, Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a SRO shall not be deemed a proposed rule change pursuant to Rule 19b–4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that includes the new derivative securities product class, and the SRO has a surveillance program for the product class.[29] The PHLX's ability to rely on Rule 19b–4(e) for Trust Shares potentially reduces the time frame for bringing Trust Shares to the market or for permitting the trading of Trust Shares pursuant to UTP, and thus enhances investors' opportunities. The Commission notes that while the proposal will reduce the PHLX's regulatory burden, the Commission maintains regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission also finds that the proposal contains adequate rules and procedures to govern the trading of Trust Shares under rule 19b–4(e). All series of Trust Shares listed under the generic standards will be subject to the full panoply of PHLX rules and procedures that would govern the trading of Trust Shares listed on the PHLX or traded pursuant to UTP. Accordingly, any series of Trust Shares listed and traded, or traded on a UTP basis, under rule 19b–4(e) would be subject to the PHLX rules governing the trading of equity securities including, among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, and margin.[30]

In addition, the PHLX has developed specific listing criteria for series of Trust Shares qualifying for rule 19b–4(e) treatment that will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets. The Commission believes that the proposed generic listing standards ensure that the securities composing the indexes and portfolios underlying Trust Shares are well capitalized and actively traded. These capitalization and liquidity criteria should serve to prevent fraudulent or manipulative acts involving Trust Shares.

In addition, all series of Trust Shares listed or traded under the generic standards will be subject to the PHLX's existing continuing listing criteria. This requirement will allow the PHLX to consider the suspension of trading and the delisting of a series if an event occurs that makes further dealing in such securities inadvisable. The Commission believes that this will give the PHLX flexibility to delist Trust Shares if circumstances warrant such action.

The PHLX will use its existing surveillance procedures for Trust Shares to monitor trading in Trust Shares traded pursuant to Rule 19b–4(e).[31] The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading Trust Shares under the generic standards. In addition, the PHLX represents that it will file Form 19b–4(e) with the Commission within five business days of the commencement of trading a series under the generic standards, and will comply with all Rule 19b–4(e) recordkeeping requirements.

The Commission also notes that certain concerns are raised when a broker-dealer is involved in both the development and the maintenance of a stock index upon which a product such as Trust Shares is based. The proposal provides that, in such circumstances, the broker-dealer must have procedures in place to prevent the misuse of material, non-public information regarding changes and adjustments to the index and that the index value must be calculated by a third party who is not a broker-dealer. The Commission believes that these requirements should help to address concerns raised by a broker-dealer's involvement in the management of such an index.

Finally, the Commission believes that the PHLX's rules will ensure that investors have information that will allow them to be apprised adequately of the terms, characteristics, and risks of trading Trust Shares. The PHLX will require members and member organizations to provide all purchasers of Trust Shares with a written description of the terms and characteristics of Trust Shares, to include this written description in sales materials provided to customers or the public, to include a specific statement relating to the availability of the description in other types of materials distributed to customers or the public, and to provide a copy of the prospectus when requested by a customer.[32] A PHLX member or member organization carrying an omnibus account for a non-member broker-dealer must inform a non-member that the execution of an order to purchase a series of Trust Shares for such omnibus account will be deemed to constitute an agreement by the non-member to make the written description available to its customers.[33]

The Commission also notes that upon the initial listing, or trading pursuant to UTP, of any Trust Shares under the generic standards, the PHLX will issue a circular to its members explaining the

[25] 15 U.S.C. 78f(b)(5).

[26] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[27] *See* Trust Shares Order, *supra* note 9.

[28] *See* Trust Shares Order, *supra* note 9.

[29] *See* 1998 Release, *supra* note 6.

[30] *See* Amendment No. 2, *supra* note 4.

[31] *See* Amendment No. 3, *supra* note 5.

[32] *See* PHLX Rule 803(i)(3).

[33] *See* PHLX Rule 803(i)(3).

unique characteristics and risks of this type of security.[34] The circular also will note the PHLX members' prospectus or product description delivery requirements, and highlight the characteristics of purchases in a particular series of Trust Shares.[35] The circular also will inform members of their responsibility under PHLX Rules 746 and 747 in connection with customer transactions in Trust Shares.[36] The Commission believes that these requirements will help to ensure adequate disclosure to investors about the terms and characteristics of a particular series of Trust Shares.

The Commission finds good cause for approving the proposed rule change and Amendment Nos. 1, 2, and 3 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the proposed rule change is based on the generic listing standards in Amex Rule 1000 *et seq.,* which the Commission approved after soliciting public comment pursuant to Section 19(b)(1) of the Act.[37] The Commission does not believe that the PHLX's proposal raises novel regulatory issues that were not addressed previously. Accordingly, the Commission believes it is appropriate to permit investors to benefit from the flexibility afforded by these new instruments by trading them as soon as possible. Amendment No. 1 strengthens the PHLX's proposal by indicating that the PHLX will file a proposed rule change pursuant to rule 19b–4 if the PHLX proposes to list and trade a series of Trust Shares that do not satisfy the proposed generic criteria. Amendment No. 2 strengthens the PHLX's proposal by clarifying, among other things, that the PHLX will distribute an information circular to members for each series of Trust Shares describing the characteristics and risks of Trust Shares and by indicating that Trust Shares will be subject to PHLX rules governing the trading of equity securities, including, among others, rules and procedures governing trading halts, responsibilities of specialists, account opening requirements, and margin. Amendment No. 3 clarifies the text of PHLX Rule 803(i)(11) and indicates that the PHLX will use its existing surveillance procedures for Trust Shares to monitor trading in Trust Shares traded pursuant to Rule 19b–4(e). Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[38] to approve the proposal and Amendment Nos. 1, 2, and 3 to the proposal on an accelerated basis.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–PHLX–00–68), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–32032 Filed 12–28–01; 8:45 am]

BILLING CODE 8010–01–M

[34] *See* Amendment Nos. 2 and 3, *supra* notes 4 and 5.

[35] *See* Amendment Nos. 2 and 3, *supra* notes 4 and 5.

[36] *See* Amendment Nos. 2 and 3, *supra* notes 4 and 5.

[37] *See* Amex Order, *supra* notes 24.

[38] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45185; File No. SR–Phlx–2001–113]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Increasing the Equity Option Transaction Charge for Broker-Dealer

December 21, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 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

The Exchange proposed to amend its schedule of dues, fees, and charges to increase its equity option transaction charge on members for off-floor broker-dealer orders[3] routed to the Exchange from $0.20 to $0.25. The Exchange intends to implement this fee on transactions settling on or after January 2, 2002.[4]

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

Currently, the Exchange imposes a fee on its members for off-floor broker-dealer orders routed to the Exchange. This category includes ROTs that trade from off-floor and broker-dealers that route orders through firm, customer, or market maker accounts carried by a member clearing firm. This category does not include firm/proprietary orders.[5] The Exchange states that all other equity option transaction charges will remain unchanged.

The Exchange states that the purpose of the proposed rule change is to generate additional revenue by increasing the fee imposed on members for off-floor broker-dealer orders routed to the Exchange. Thus, the broker-dealer

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of the equity option transaction charge, the Exchange defines the term ''broker-dealer charge'' as a charge that is applied to members for orders, entered from other than the floor of the Exchange, for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes orders for the account of a Registered Options Trader (''ROT'') entered from off-floor. *See* Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000) (SR–Phlx–00–85).

[4] The Exchange states that this fee will continue to be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

[5] According to the Exchange, a firm/proprietary transaction or comparison charge applies to members for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35 percent of its annual, gross revenues from commissions and principal transactions with customers. *See* Securities Exchange Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000) (SR–Phlx–00–85).

option transaction charge will be increased from $0.20 to $0.25.

(2) Statutory Basis

The exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(4),[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members. The Exchange believes the proposal is equitable and reasonable because the proposed broker-dealer equity option transaction charge is not substantially higher than other fees.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore has become effective upon filing pursuant to rule 19(b)(3)(A)(ii) of the Act[8] and rule 19b–4(f)(2) hereunder.[9] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act. The Exchange has stated that it intends to implement this fee on transactions settling on or after January 2, 2002.

**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. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2001–113 and should be submitted by January 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–32081 Filed 12–28–01; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer and at the following addresses:

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503

(SSA)

Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–4145, or by writing to him at the address listed above.

1. *Authorization To Obtain Earnings Data For The Social Security Administration–0960–0602.* The information requested on Form SSA–581 is necessary only for identification of the earnings record, verification of the signature authorizing access to the earnings record and for disposition of the response. The respondents are individuals and various private/public organizations/agencies that need detailed earnings information.

*Number of Respondents:* 60,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 2 minutes.

*Estimated Annual Burden:* 2,000 hours.

2. *Statement Regarding Contributions–0960–0020.* Form SSA–783 is used to make a determination and obtain information about the source of support for a child applicant who must meet a dependency requirement for entitlement to benefits. The respondents are persons giving information about child's sources of support for entitlement to child's benefits.

*Number of Respondents:* 30,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 17 minutes.

*Estimated Annual Burden:* 8,500 hours.

3. *Credit Card Payment Acknowledgement Form—0960–NEW.* SSA will use the information collected on Form SSA–324 to process payments from separating and former employees who have outstanding debts owed to the agency. This form has been developed as a convenient method for respondents to satisfy such debts. The respondents are former employees who have debts still owed to the agency.

*Number of Respondents:* 6,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 5 minutes.

*Estimated Annual Burden:* 500 hours.

4. *Online Authentication Information Collection Form—TEST—0960–NEW.*

**Background**

The Government Paperwork Elimination Act (GPEA) of 1998 directed federal agencies to develop electronic service delivery instruments

as an alternative to traditional paper based methods. The Social Security Administration plans to expand Internet services for all its applications to enable citizens to complete the application process as well as to process their requests for post-entitlement transactions online. A major requirement for filing applications and for processing transactional requests is SSA's ability to adequately authenticate the citizen. SSA cannot disclose information unless it is under the provisions of the FOIA and the Privacy Act of 1974. Because these transactions will be taking place online, SSA must authenticate citizens by asking for information that would positively identify the requester of the information as the proper party. This information will be validated against identifying information residing in databases outside of SSA. As a result SSA will conduct a test of the Treasury Department's Pay.Gov authentication engine as a possible tool for out-of-band authentication.

*The Collection*

The Social Security Administration will use the data collected on the Online Authentication Information Collection Form—TEST, to evaluate the Treasury Department's ''Pay.Gov'' authentication engine as a possible tool for SSA to validate out-of-band online applicants. The respondents for this test are members of the general public who elect to complete the form for testing.

*Number of Respondents:* 161.

*Frequency of Response:* 1.

*Average Burden Per Response:* 5 minutes.

*Estimated Annual Burden:* 13 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed above.

1. *Railroad Employment Questionnaire—0960–0078.* The Social Security Administration (SSA) uses Form SSA–671 to secure sufficient information to effect the required coordination with the Railroad Retirement Board for Social Security claims processing. It is completed whenever claimants give indications of having been employed in the railroad industry. The respondents are applicants for Social Security benefits, who have had railroad employment, or dependents of railroad workers.

*Number of Respondents:* 125,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 5 minutes.

*Estimated Annual Burden:* 10,417 hours.

2. *Employer Report of Special Wage Payments—0960–0565.* SSA gathers the information on Form SSA–131 to prevent earnings related overpayments to employees and to avoid erroneous withholding. The respondents are employers who provide special wage payment verification.

*Number of Respondents:* 30,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 20 minutes.

*Estimated Annual Burden:* 10,000.

3. Request for Address Information from Motor Vehicles Records, SSA-L711; Request for Address Information from Employment Commissions Records, SSA-L712—0960–0341. SSA sends the SSA–L711 to State Motor Vehicle Adminstrations to obtain the last known address from driver's license and vehicle registration records. SSA sends the SSA–L712 to State Employment Commissions to obtain last known address from State unemployment/employment wage records. SSA uses the information to locate debtors to arrange for payment of a debt. The respondents are State Motor Vehicle Administrations and State Employment Commissions.

| | SSA–L711 | SSA–L712 |
|---|---|---|
| Number of Respondents | 1,300 | 1,100 |
| Frequency of Response | 1 | 1 |
| Average Burden Per Response | 2 minutes | 2 minutes |
| Estimated Annual Burden | 43 hours | 37 hours |

Dated: December 20, 2001.

**Frederick W. Brickenkamp,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 01–32027 Filed 12–28–01; 8:45 am]

**BILLING CODE 4191–02–U**

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

**[USCG–2001–11220]**

## Random Drug Testing Rate for Covered Crewmembers

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of minimum random drug testing rate.

**SUMMARY:** The Coast Guard has set the calendar year 2002 minimum random drug testing rate at 50 percent of covered crewmembers. An evaluation of the 2000 Management Information System (MIS) data collection forms submitted by marine employers determined that random drug testing on covered crewmembers for the calendar year 2000 resulted in positive test results 1.81 percent of the time. Based on this percentage, we will maintain the minimum random drug testing rate at 50 percent of covered crewmembers for the calendar year 2002.

**DATES:** The minimum random drug testing rate is effective January 1, 2002 through December 31, 2002. You must submit your 2001 MIS reports no later than March 15, 2002.

**ADDRESSES:** You must mail your annual MIS report to Commandant (G–MOA), U.S. Coast Guard Headquarters, 2100 Second Street SW, Room 2403, Washington, DC 20593–0001.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, please contact Lieutenant Commander Scott Budka, Project Manager, Office of Investigations and Analysis (G–MOA), U.S. Coast Guard Headquarters, telephone 202–267–2026.

**SUPPLEMENTARY INFORMATION:** Under 46 CFR 16.230, the Coast Guard requires marine employers to establish random drug testing programs for covered crewmembers on inspected and uninspected vessels. All marine employers are required to collect and maintain a record of drug testing program data for each calendar year, January 1 through December 31. You must submit this data by 15 March of the following year to the Coast Guard in an annual MIS report (Form CG–5573 found in Appendix B of 46 CFR 16). You may either submit your own MIS report or have a consortium or other employer representative submit the data in a consolidated MIS report. The chemical drug testing data is essential to analyze our current approach for

deterring and detecting illegal drug abuse in the maritime industry.

Since 2000 MIS data indicates that the positive random testing rate is greater than one percent industry-wide (1.81 percent), the Coast Guard announces that the minimum random drug testing rate is set at 50 percent of covered employees for the period of January 1, 2002 through December 31, 2002 in accordance with 46 CFR 16.230(e).

Each year we will publish a notice reporting the results of the previous calendar year's MIS data, and the minimum annual percentage rate for random drug testing for the next calendar year.

Dated: December 17, 2001.

**Paul J. Pluta,**

*Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 01–32044 Filed 12–28–01; 8:45 am]

BILLING CODE 4910–15–U

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

**[USCG–2001–11226]**

## Chemical Transportation Advisory Committee

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The Subcommittees of the Chemical Transportation Advisory Committee (CTAC) on Prevention Through People (PTP) and Vessel Cargo Tank Overpressurization will meet to continue their work on their Subcommittee Task Statements. The PTP Subcommittee will meet to review its draft of the Marine Operations Risk Assessment Guide and to continue its work with the Ovepressurization Subcommittee in conducting a risk assessment for purging operations. The Vessel Cargo Tank Overpressurization Subcommittee will meet to continue developing recommendations for CTAC in an effort to prevent cargo tank overpressurization during inerting, padding, purging, line clearing, and railcar transfer operations. These meetings will be open to the public.

**DATES:** The PTP Subcommittee will meet on Thursday, January 17, 2002, from 9 a.m. to 4 p.m. The Vessel Cargo Tank Overpressurization Subcommittee will meet on Friday, January 18, 2002, from 9 a.m. to 3:30 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before January 14, 2002. Requests to have a copy of your material distributed to each member of the Subcommittee should reach the Coast Guard on or before January 14, 2002.

**ADDRESSES:** The Subcommittees will meet at Stolt-Nielsen Transportation Group Ltd., 15635 Jacintoport Blvd., Houston, Texas. Send written material and requests to make oral presentations to Lieutenant Greg Herold or Lieutenant Michael McKean, Coast Guard Technical Representatives for the Subcommittees, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Greg Herold, the Coast Guard Technical Representative for the PTP Subcommittee, telephone 202–267–0084, fax 202–267–4570, or Lieutenant Michael McKean, the Coast Guard Technical Representative for the Vessel Cargo Tank Overpressurization Subcommittee, telephone 202–267–0087, fax 202–267–4570.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

### Agenda of Meetings

The agenda of the CTAC Subcommittee on PTP includes the following:

(1) Introduction of Subcommittee members and attendees.

(2) Brief review of Subcommittee tasking and desired outcome.

(3) Review and discuss the Marine Operations Risk Assessment Guide.

(4) Discuss case studies and ways to enhance the Assessment Guide.

(5) Discuss the marketing and distribution of the Assessment Guide.

The agenda of the CTAC Subcommittee on Vessel Cargo Tank Overpressurization includes the following:

(1) Introduction of Subcommittee members and attendees.

(2) Brief review of Subcommittee tasking and desired outcome.

(3) Finish risk analysis of purging operation using the PTP Marine Operations Risk Assessment Guide.

(4) Continue work to complete long-term task.

### Procedural

These meetings are open to the public. Please note that the meetings may close early if all business is finished. All attendees at the meetings are encouraged to fully review the Subcommittee's past work prior to the meetings. Copies of the Subcommittee's past work can be obtained from Lieutenant Greg Herold or Lieutenant Michael McKean, telephone 202–267–0084 or 0087, respectively, fax 202–267–4570. Information is also available from the CTAC Internet Website at: *www.uscg.mil/hq/g-m/advisory/ctac.* At the discretion of the Subcommittee Chairs, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at one of the meetings, please notify the Coast Guard Technical Representative to that Subcommittee and submit written material on or before January 14, 2002. If you would like a copy of your material distributed to each member of a Subcommittee in advance of a meeting, please submit 25 copies to the Coast Guard Technical Representative to that Subcommittee no later than January 14, 2002.

### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact the Coast Guard Technical Representative for the Subcommittee as soon as possible.

Dated: December 21, 2001.

**Howard L. Hime,**

*Acting Director of Standards, Marine Safety and Environmental Protection.*

[FR Doc. 01–32028 Filed 12–28–01; 8:45 am]

BILLING CODE 4910–15–M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

**[USCG–2001–11228]**

## Commercial Fishing Industry Vessel Advisory Committee

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) will meet to discuss various issues relating to commercial vessel safety in the fishing industry. The meetings are open to the public.

**DATES:** CFIVAC will meet on Wednesday, February 6, 2002, from 9 a.m. to 5 p.m. and February 7, 2002, from 9 a.m. to 5 p.m. The meeting may close early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before January 16, 2002. Written material for distribution at the meeting should reach the Coast Guard on or before January 23, 2002. Requests to

have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before January 9, 2002.

**ADDRESSES:** CFIVAC will meet in the Nassif Building, Department of Transportation Building, Room 3328, 400 7th Street, SW., Washington, DC, 20593. Send written material and requests to make oral presentations to Captain Jon Sarubbi, Commandant (G–MOC), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Captain Jon Sarubbi, Executive Director of CFIVAC, or David Beach, Assistant to the Executive Director, telephone (202) 267–0505, fax (202) 267–0506.

**SUPPLEMENTARY INFORMATION:** Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

### Agenda of Meeting

The agenda includes the following:

(1) Introduction, recognition of newly appointed committee members, and approval of last meeting's minutes.

(2) Status report from the Coast Guard on legislative change proposal process and regulatory projects with respect to mandatory exams, training requirements, stability requirements, and immersion suit requirements.

(3) Status report from the Coast Guard on casualty data, statistics, and the Coast Guard's new database for Marine Safety.

(4) Presentation by the Society of Naval Architects and Marine Engineers (SNAME) on their ad hoc committee to improve fishing vessel operator understanding of vessel stability and watertight integrity.

(5) Discussions of industry roles and concerns under the new national security posture.

(6) Discussions and working group sessions by the committee on mandatory exams, security requirements, stability requirements, and regionalization issues.

### Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than January 16, 2002. Written material for distribution at the meeting should reach the Coast Guard no later than January 23, 2002. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Executive Director no later than January 9, 2002.

### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: December 21, 2001.

**Paul J. Pluta,**

*Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 01–32029 Filed 12–28–01; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

**[USCG–2001–11219]**

## Reform of Pilotage on the Great Lakes

**AGENCY:** Coast Guard, DOT.

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

**SUMMARY:** The Coast Guard's Office of Great Lakes Pilotage is holding a public meeting to discuss ways of improving the safety, reliability, and efficiency of pilotage on the Great Lakes. We will also discuss issues brought to our attention during the meeting of January 30, 2001, and comments submitted to the docket for that meeting. We encourage interested parties to attend the meeting announced by this notice and submit comments for discussion during it. We also seek comments to the docket, especially from any party unable to attend the meeting.

**DATES:** We will hold the public meeting on January 31, 2002, from 12 p.m. to 5 p.m. We may end the meeting early, if we have covered all the topics on the agenda and if the people attending have no further comments.

Comments to the Docket: The Docket Management Facility must receive your comments on or before January 22, 2002.

**ADDRESSES:** We will hold the public meeting in room B1, the Federal Building, 1240 East 9th Street, Cleveland, Ohio 44199.

Comments to the Docket: Look in the first column of the table to select *one* of the four means of submitting your comments. Then, use the address or number in the second column to submit them:

| If you are using this means | Please use this address or fax number |
|---|---|
| (1) Internet | *http://dms.dot.gov* |
| (2) In Person | Room PL–401, on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC: Hours: 9 a.m. to 5 p.m., Monday through Friday. Closed on Federal holidays. *Telephone number:* 202–366–9329. |
| (3) By mail | Docket Management Facility, (USCG–1999–6635), U.S. Department of Transportation room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. |
| (4) Fax | Docket Management Facility: 202–493–2251. |

In choosing among these means, please give due regard to the recent difficulties with delivery of mail by the U.S. Postal Service to Federal facilities.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice or the public meeting, write or call Mr. Tom Lawler, Chief Economist, Office of Great Lakes Pilotage (G–MW), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20590, telephone 202–267–1241. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

**SUPPLEMENTARY INFORMATION:**

### How Do I Participate in This Action?

The Coast Guard encourages you to participate by submitting comments and related material, and by attending the public meeting. If you submit comments, please include—

- Your name and address;
- The docket number for this notice [USCG–2001–11219];

• The specific section of this notice to which each comment applies; and

• The reason for each comment.

You may electronically submit, deliver, mail, or fax your comments and attachments to the Docket Management Facility, using an address or fax number listed under **ADDRESSES.** Please do not submit the same comment or attachment by more than one means. If you mail or deliver your comments, they must be on 8½-by-11 inch paper, and the quality of the copy should be clear enough for copying and scanning. If you mail your comments, and you would like to know whether the Facility received them, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

**How Can I Get More Information, Including Copies of This Notice or Related Documents?**

The Docket Management Facility maintains the public docket for this notice. The number of the docket is USCG–2001–11219. Comments, and other documents related to this notice will become part of this docket and will be available for inspection or copying as follows:

• *In person:* You may see the docket in room PL–401, on the Plaza Level of the Nassif Building at the same address, between 9 a.m. and 5 p.m., Monday through Friday. The facility is closed on Federal holidays.

• *Electronically:* You may read the docket on the Internet at *http://dms.dot.gov.*

**Where Can I Get Information on Service for Individuals With Disabilities?**

To obtain information on facilities or services for individuals with disabilities or to ask that we provide special assistance at the public meeting, please notify Mr. Tom Lawler as soon as possible. You will find his address and phone number under **FOR FURTHER INFORMATION CONTACT.**

**Why Is the Coast Guard Holding This Public Meeting?**

Annually the Coast Guard holds a meeting to respond to requests for a comprehensive review of pilotage on the Great Lakes aimed at improving safety, reliability, and efficiency. Requests for these annual meetings come from all parts of the marine industry operating on the Lakes.

**What Issues Should I Discuss at the Meeting or Address in Comments to the Docket?**

The public meeting on January 31, 2002, will provide a forum for members of the public to discuss ways to improve the safety, reliability and efficiency of pilotage on the Great Lakes. You may discuss or comment on means to these ends. Interested parties should submit issues for discussion at the public meeting to the docket by January 22, 2002.

**What Is the Agenda for the Public Meeting?**

*Agenda*

The agenda for the meeting on January 31, 2002, is as follows:

• 12 p.m.–12:15 p.m. Introduction and Overview.

• Review of Items from the 30 January 2001 Public Meeting, including: Standards for hours on bridges, Status of Great Lakes Pilotage Advisory Committee, Status of plan for training on Automatic Identification System, Report of water levels in ports on Great Lakes, Review of Applicant pilots' application, Reporting of status of problems on vessels,Source Forms, Policy on Recuperative Rest, Review of designated waters, and

• Discussion of issues submitted to the docket.

Dated: December 18, 2001.

**Howard L. Hime,**

*Acting Director of Standards, Marine Safety and Environmental Protection.*

[FR Doc. 01–32043 Filed 12–28–01; 8:45 am]

**BILLING CODE 4910–15–U**

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

**[USCG–2001–11225]**

## Towing Safety Advisory Committee

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Towing Safety Advisory Committee's (TSAC) Working Group for Crew Alertness, and its Working Group for the Review of a Report from the Gulf Coast Mariner's Association (GCMA), will meet to discuss alertness risk factors on towing vessels and a variety of concerns expressed by the association in the GCMA report. The meetings are open to the public.

**DATES:** The Working Groups will meet on Wednesday, January 16, 2002, from 1 p.m. to 5 p.m., and on Thursday, January 17, 2002, from 8 a.m. to 12 noon. These meetings may close early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before January 15, 2002.

**ADDRESSES:** The Working Groups will meet in room 6103 of U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001. Send written materials and requests to make oral presentations to Mr. Gerald P. Miante, Commandant (G–MSO–1), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001. This notice and the Gulf Coast Mariners Association Report #R–276 are available in docket USCG–2001–11225, which is on the Internet at *http://dms.dot.gov.*

*Security notice:* All non-military/government participants MUST first go to the security office at Headquarters' Second Street entrance with a photo ID (driver's license) and sign in. You will then receive a pass for the day and be provided an escort. This exercise must be repeated on the second day of the meetings.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gerald P. Miante, Assistant Executive Director, TSAC, telephone 202–267–0229, fax 202–267–4570, or e-mail at: *gmiante@comdt.uscg.mil.*

**SUPPLEMENTARY INFORMATION:** Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

**Agenda of Meetings**

The agenda for the Crew Alertness Working Group includes evaluating the criticality of those risk factors identified in distinct towing vessel operating environments, drafting recommendations for measures consistent with the non-regulatory philosophy of the Prevention through People (PTP) program and the Crew Alertness campaign, and making recommendations on the best way to communicate these recommendations to the appropriate audiences. The agenda for the Review Working Group is limited to a review of the issues contained in GCMA report #R–276 and the drafting of recommendations. See the **ADDRESSES** paragraph above for information on viewing the report, #R–276. Products from both working groups will be presented to the full Committee for approval and transmittal to the Coast Guard at a later date.

**Procedural**

These meetings are open to the public. Please note that the meetings may close early if all business is finished. Members of the public may make presentations, oral or written, at

either meeting. If you would like to make an oral presentation at either meeting, please notify the Assistant Executive Director on or before January 15, 2002.

**Information on Services for Individuals With Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: December 21, 2001.

**Howard L. Hime,**

*Acting Director of Standards, Marine Safety and Environmental Protection.*

[FR Doc. 01–32030 Filed 12–28–01; 8:45 am]

BILLING CODE 4910–15–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

**[Docket No. FAA–2001–111229]**

## Firearms, Less-Than-Lethal Weapons, and Emergency Services on Commercial Air Flights

**ACTION:** Request for comments.

**SUMMARY:** The FAA is requesting comments on issues related to pilots carrying firearms into the cockpit and flight deck crewmembers carrying less-than-lethal weapons on aircraft providing air transportation or intrastate air transportation. We are also requesting comments on issues related to provision of emergency services on commercial air flights during emergencies by law enforcement officers, firefighters, and emergency medical technicians. This action is part of an effort to develop recommendations for possible future action by the Department of Transportation.

**DATES:** Send you comments to reach us on or before February 14, 2002.

**ADDRESSES:** Mail your comments to—Public Docket Office, Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590–0001.

Or send your comments through the Internet to—*http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kent Stephens, Manager, Air Carrier Operations Branch, AFS–220, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9518.

**SUPPLEMENTARY INFORMATION:**

**Your Comments Are Welcome**

We invite your comments on the issues described in this notice. The most useful comments are those that are specific and related to issues raised by the notice. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the issues and determining what future actions we should undertake.

To ensure consideration, you must identify the Rules Docket number in your comments, and you must submit comments to one of the addresses specified under the **ADDRESSES** section of this preamble. We will consider all communications received on or before the closing date for comments. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. We will file in the Rules Docket a report that summarizes each public contact related to the substance of this notice.

You may review the public docket containing comments on this notice in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the address specified in the **ADDRESSES** section. Also, you may review the docket on the Internet at *http://dms.dot.gov.*

If you want us to acknowledge receipt of your comments submitted in response to this notice, you must include with your comments a self-addressed, stamped postcard on which you identify the Rules Docket number of this notice. We will date stamp the postcard and return it to you.

**Availability of Documents**

You can get an electronic copy of this notice using the Internet through FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or through the Federal Register's web page at *http://www.access.gpo.gov/su__docs/aces/aces140.htm*

You can get a paper copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number of this rulemaking.

**Background**

As a result of the events of September 11, 2001, Congress passed and the President signed the Aviation and Transportation Security Act (ATSA), a comprehensive measure designed to protect the security of the Nation's air transportation system. See Pub. L. 107–71, 115 Stat. 597, November 19, 2001. The Department of Transportation is this notice is seeking public comment to assist it in developing recommendations for possible future actions to implement the following three sections of ASTA.

Sec. 126 of ATSA amends section 44903 of Title 49 of the United States Code to provide in part that the Secretary of Transportation, after receiving recommendations from the National Institute of Justice, may authorize members of flight deck crews on aircraft providing air transportation or intrastate air transportation to carry a less-than-lethal weapon. If the Secretary grants authority to carry a less-than-lethal weapon, the Secretary must—

- Prescribe rules requiring that any such crew member be trained in the proper use of the weapon, and
- Prescribe guidelines setting forth the circumstances under which such weapons may be used.

Sec. 128 of ATSA provides that the pilot of a passenger aircraft operated by an air carrier in air transportation or intrastate air transportation is authorized to carry a firearm into the cockpit if—

- The Under Secretary for Transportation Security approves;
- The air carrier approves;
- The firearm is approved by the Under Secretary; and
- The pilot has received proper training for the use of the firearm, as determined by the Under Secretary.

Sect. 131 of ATSA, in part, provides that the Under Secretary for Transportation Security must carry out a program to permit law enforcement officers, firefighters, and emergency medical technicians to provide emergency services on commercial air flights during emergencies. To carry out the program, the Under Secretary for Transportation Security must establish requirements for qualifications and training of providers of emergency services. If one of these individuals meets such qualifications and training requirements, ASTA provides that he or she may not be held liable for damages.

As noted above, he FAA plans to develop a set of recommendations to the Department of Transportation for carrying out these portions of ATSA. As a preliminary step, we are asking for public comment on a number of issues that we have identified as potentially being addressed in the recommendations. We plan to consider any comments we receive in response to this request for comments in developing specific recommendations. If the Department of Transportation conducts

rulemaking on these issues, there will be another round of public comment. We invite the public to send us information and comments relating to the following issues:

1. Whether pilots and other flight crew members should carry firearms of less-than-lethal weapons, and if so, whether it should be on a voluntary basis;

2. Whether and how the weapons should be stored on the aircraft or carried on board;

3. The types and numbers of less-than-lethal weapons that should be carried on aircraft for use by qualified flight deck crew members;

4. The types of restraining devices or other kinds of equipment that should be on aircraft;

5. The types and numbers of firearms that should be carried on aircraft for use by qualified pilots and the types of ammunition;

6. The amount and type of weapons training that we should require, including whether there should be initial and recurrent training.

7. How the less-than-lethal weapons and firearms should be carried, stored, maintained (if necessary), and accessed on the aircraft.

8. What types of aircraft modifications we should require when aircraft are equipped with less-than-lethal weapons or firearms, such as modifications to ventilation or avionics systems;

9. Whether the qualifications for using less-than-lethal weapons or firearms should be integrated into the existing systems for establishing and maintaining airman qualifications, such as pilot certificates and ratings;

10. The circumstances under which less-than-lethal weapons may be used;

11. How to identify individuals who are willing to provide emergency services on commercial flights;

12. Whether to maintain a registry of some or all of these individuals;

13, The minimum qualifications of those who would provide emergency services on commercial air flights; and

14. The type of training providers of emergency services on commercial air flights should have.

We invite the public to raise any additional issues or concerns related to these issues, including any other factors that we should consider addressing in our recommendations.

Issued in Washington, DC, on December 21, 2001.

**James J. Ballough,**

*Director, Flight Standards Service.*

[FR Doc. 01–32040 Filed 12–28–01; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aviation Rulemaking Advisory Committee Meeting on Air Carrier and General Aviation Maintenance Issues

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Federal Aviation Administration (FAA) is issuing this notice to advise the public of a meeting of the FAA Aviation Rulemaking Advisory Committee to discuss Air Carrier and General Aviation Maintenance Issues. Specifically the committee will discuss two tasks concerning quality assurance and ratings for aeronautical repair stations.

**DATES:** The meeting will be held on January 9, 2002, from 9 a.m. to 5 p.m. Arrange for teleconference capability and presentations by January 3, 2002.

**ADDRESSES:** The meeting will be held at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Vanessa R. Wilkins, Federal Aviation Administration, Office of Rulemaking (ARM–207), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8029; fax (202) 267–5075.

**SUPPLEMENTARY INFORMATION:** Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to discuss air carrier and general aviation maintenance issues to be held on January 9, 2002, from 9 a.m. to 5 p.m. at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC 20005.

**Meeting Agenda**

- Opening remarks and committee administration
- Discussion of quality system elements relating to a quality assurance program
- Break
- Discussion of current regulatory requirements relating to quality system elements
- Lunch
- Discussion of quality assurance/system elements missing from current regulatory requirements
- Break
- Discussion of repair station ratings
- Adjourn

Attendance is open to the interested public, but will be limited to the space available. The FAA will arrange teleconference capability for individuals wishing to participate by teleconference if we receive notification by January 3, 2002. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area will be responsible for paying long distance charges.

The public must make arrangements by January 3, 2002, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director, or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested by January 3, 2002. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on December 20, 2001.

**David E. Cann,**

*Assistant Executive Director, Aviation Rulemaking Advisory Committee.*

[FR Doc. 01–32039 Filed 12–28–01; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Proposed Agency Information Collection Activities; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

**DATES:** Comments must be received no later than March 1, 2002.

**ADDRESSES:** Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Dian Deal, Office of

Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0544. Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or E-mail to Mr. Brogan at *robert.brogan@fra.dot.gov,* or to Ms. Deal at *dian.deal@fra.dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of three currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

*Title:* Passenger Equipment Safety Standards.

*OMB Control Number:* 2130–0544.

*Abstract:* The information gained from daily inspections is used to detect and correct equipment problems so as to prevent collisions, derailments, and other occurrences involving railroad passenger equipment that cause injury or death to railroad employees, railroad passengers, or the general public; and to mitigate the consequences of any such occurrences, to the extent they can not be prevented. The information provided promotes passenger train safety by ensuring requirements are met for railroad passenger equipment design and performance; fire safety; emergency systems; the inspection, testing, and maintenance of passenger equipment; and other provisions for the safe operation of railroad passenger equipment.

*Affected Public:* Railroads.

*Respondent Universe:* 685 railroads.

*Frequency of Submission:* On occasion; annually, recordkeeping.

*Reporting Burden:*

| CFR section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| 216.14—Special Notice for Repairs. | 14 Railroads | 9 Forms | 5 minutes | 1 | $34 |
| 238.1—Scope | 14Railroads | 11 Notifications | 45 minutes | 8 | 272 |
| 238.7—Waivers | 14 Railroads | 9 Waivers | 2 hours/25 hours | 64 | 2,176 |
| 238.11—Penalties | 14 Railroads | 1 False Report | 15 minutes | 25 | 8 |
| 238.15—Pass Equip.—Detective en route. | 14 Railroads | 1,000 Tags/cards | 3 minutes | 50 | 2,250 |
| —Auto Tracking Sys | 14 Railroads | 288 Tags/cards | 3 minutes | 14 | 630 |
| —Conditional Reqmnt | 14 Railroads | 144 Notifications | 3 minutes | 7 | 315 |
| 238.17—Usual Limitations Pass Equip—Defects. | 14 Railroads | 200 Tags/cards | 3 minutes | 10 | 300 |
| —Safety App Defects | 14 Railroads | 76 Tags/cards | 3 minutes | 4 | 120 |
| Notifications | 14 Railroads | 38 Notifications | 30 seconds | .32 | 10 |
| 238.19—List of Brake Repair Points. | 14 Railroads | 1 List | 2 hours | 2 | 68 |
| —Subsequent Yrs | 14 Railroads | 1 Update | 1 hour | 1 | 34 |
| 238.21—Spec. Approval Proced. | 14 Railroads | 1 Petition | 16 hours | 16 | 544 |
| —Alt. Compliance | 14 Railroads | 1 Petition | 120 hours | 120 | 4,080 |
| —Service Test Plan | 14 Railroads | 2 Plans | 40 hours | 80 | 2,720 |
| —Comments | 14 Railroads | 8 Comments | 1 hour | 8 | 440 |
| 238.103—Fire Saf | 14 Railroads | 4 Equip Designs | 540 hours | 2,160 | 110,400 |
| —Subsequent Orders | 14 Railroads | 4 Equip Designs | 60 hours | 240 | 24,000 |
| 238.107—Insp. Test & Main Plan. | 14 Railroads | 14 Reviews | 60 hours | 840 | 28,560 |

| CFR section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| 238.109—Employee Training | 14 Railroads | 3,900 Employees | 2 hours | 7,800 | 232,500 |
| —Recordkeeping | 14 Railroads | 2,500 Records | 3 minutes | 125 | 4,250 |
| 238.111—Pre-Rev. Service Test Plan. | 10 Equip Man. | 4 Plans | 16 hours | 64 | 4,288 |
| —Pre-Rev. Service Test Plan. | 10 Equip Man | 4 Plans | 200 hours | 800 | 69,440 |
| Subsequent Orders | 10 Equip Plan | 4 Plans | 60 hours | 240 | 18,720 |
| 238.203—Static End Strength | 14 Railroads | 1 Petition | 100 hours | 100 | 5,500 |
| —Comments | 14 Railroads | 6 Comments | 20 hours | 120 | 6,600 |
| 238.237—Auto Monitoring | 14 Railroads | 14 Documents | 2 hours | 28 | 952 |
| —Tags | 14 Railroads | 100 Tags | 3 minutes | 5 | 225 |
| 238.303—MU Locos Inop. Brakes. | 14 Railroads | 50 Tags/cards | 3 minutes | 3 | 135 |
| —Conv. Locomotive | 14 Railroads | 50 Tags/cards | 3 minutes | 3 | 135 |
| —Written Notices | 14 Railroads | 25 Written Notices | 3 minutes | 1 | 34 |
| —Records | 14 Railroads | 2,017,756 Records | 1 minute | 33,629 | 1,143,386 |
| 238.305—Int. Calendar Day Insp. | 14 Railroads | 480 Tags | 1 minute | 8 | 288 |
| —Records | 14 Railroads | 1,866,904 Records | 1 minute | 31,115 | 1,057,910 |
| 238.307—Periodic Mech Insp.—p/cars. | 14 Railroads | 5 Notifications | 3 hours | 25 | 850 |
| —Records | 14 Railroads | 56,462 Records | 2 minutes | 941 | 63,988 |
| —Detailed Docs | 14 Railroads | 5 Documents | 100 hours | 500 | 17,000 |
| 238.311—Single Car Test | 14 Railroads | 25 Tags | 3 minutes | 1 | 36 |
| 238.315—Class IA—Brake Pressure. | 14 Railroads | 365,000 Communications | 3 seconds | 304 | 0 |
| —Comm Signal Sys | 14 Railroads | 365,000 Tests | 15 seconds | 1,521 | 0 |
| 238.317—Class II Brake Test | 14 Railroads | 365,000 Communications | 3 seconds | 304 | 0 |
| —Signal Sys | 14 Railroads | 365,000 Tests | 15 seconds | 1,521 | 50 |
| 238.431—Brake System | 14 Railroads | 1 Analysis | 40 hours | 40 | 1,360 |
| 238.437—Emerg Communication. | 3 Car Manuf | 3 instr. Sets/2250 decals | 25 hours/10 min | 117 | 3,810 |
| 238.441—Emerg. Roof Entrance Loc. | 3 Car Manuf | 3 instr. Sets/250 placards | 25 hours/1 hour | 325 | 10,050 |
| 238.445—Auto. Monitoring | 1 Railroad | 10,000 Alerts | 10 seconds | 28 | 0 |
| —Self-Test Feature | 1 Railroad | 21,900 Notification | 20 seconds | 122 | 0 |

*Total Responses:* 5,442,514.

*Estimated Total Annual Burden:* 83,417 hours.

*Status:* Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Authority:** 44 U.S.C. 3501–3520.

**Kathy A. Weiner,**

*Director, Office of Information Technology and Support Systems,Federal Railroad Administration.*

[FR Doc. 01–32018 Filed 12–28–01; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[FRA Docket No. 2001–11212, Notice No. 1]**

**RIN 2130–AA81**

### Alcohol/Drug Regulations: Temporary Post-Accident Blood Testing Procedures

**AGENCY:** Federal Railroad Administration (FRA)

**ACTION:** Notice.

**SUMMARY:** Some of the existing FRA post-accident toxicology testing (PATT) kits contain blood tubes with expiration dates ranging from December 2001 to May 2002. These expiration dates refer only to the vacuum used in the tubes to draw blood. The replacement blood tubes that are currently available will also expire in a few months. For this reason, FRA will delay replacement of the expiring tubes until completely new lots of 18–24 month blood tubes become available in early 2002.

This notice explains the procedures to be followed until the replacement of these expiring blood tubes is complete. These temporary procedures will not compromise either the quality or integrity of any test results.

**FOR FURTHER INFORMATION CONTACT:** Lamar Allen, Alcohol and Drug Program Manager (RRS–11), Office of Safety, FRA, 400 7th Street, SW, Washington, DC 20590 (Telephone: (202) 493–6313) or Patricia V. Sun,Trial Attorney (RCC–11), Office of Chief Counsel, FRA, 400 7th Street, SW, Washington, DC 20590 (Telephone: (202) 493–6060).

### Background

Since 1986, FRA has included Vacutainer brand 10 milliliter (mL) evacuated blood collection tubes, manufactured by Becton Dickinson (Becton), in its post-accident toxicology testing (post-accident) kits. Each of the three individual post-accident kits in a post-accident toxicology testing box contains two Vacutainer brand ''grey-top'' glass tubes. These tubes, which have no interior coating, contain silicone, a rubber stopper lubricant; sodium fluoride, an antibacterial agent and mild anticoagulant; and potassium oxalate, an anticoagulant. As explained

below, grey-top tubes are the only commercial blood collection tubes generally available that contain sodium fluoride in the preferred concentration and are FRA's tubes of choice for FRA post-accident testing.

On each tube, Becton has printed an expiration date, the date until which it warrants that the tube has sufficient vacuum to draw blood. Becton normally releases its blood tubes in lots which expire within 18–24 months of manufacture.

Many of the post-accident kits that have been distributed to railroads contain blood tubes that will expire in the next few months from November 2001 to May 2002. The replacement blood tube lots that are now available have only a few months remaining before their warranted vacuum capability expires. FRA has therefore decided to delay tube replacement until newly prepared 18–24 month blood tubes become available in early 2002.

**Interim Procedures**

Until the current inventory of blood tubes in the field is replaced in early 2002, FRA authorizes railroads to instruct local medical personnel to replace the expired tubes with their own stock of unexpired 10 mL, preferably grey-top, tubes. Substituted tubes must be 10 mL, not the 5 mL type, to ensure sufficient blood for analysis. This action is requested, but not required, and need only be considered when expired tubes are discovered *during an actual post-accident collection.* Medical facilities maintain supplies of grey-top and other color top vacuum tubes for clinical purposes. Tube replacement is always preferred to using expired tubes, but, if tube replacement is not possible, railroads are authorized to complete the post-accident collection using the expired blood tubes.

This procedure will *not* lead to an employee being subject to venipuncture more than once during a post-accident collection procedure. To draw blood specimens, a phlebotomist uses a single needle system that permits filling of more than one tube from the same needle unit. Use of an older grey-top tube may result in collecting a smaller specimen amount in that particular tube, but only if the vacuum in the tube, which is the differential between the tube's internal pressure and the atmospheric pressure, has been significantly reduced. If this should happen, the blood collector will simply replace that blood tube with a new tube; no new puncture is necessary.

**Scientific and Technical Issues**

Although FRA's interim procedures require railroads to replace expired blood tubes with unexpired tubes if possible, the use of an expired blood tube will not adversely affect employee rights or impact the validity of post-accident test results. FRA's post-accident testing program incorporates testing and analysis protocols designed to protect employees from unwarranted accusations of alcohol or drug use.

Discussed below are the two primary scientific and technical issues concerning the use of expired tubes: (1) The integrity of the vacuum present in the tube to draw blood properly, and (2) the potency of the chemical additives.

Evacuated blood tubes that have recently expired (i.e., within the past several months) are not expected to show a dramatic decrease in tube vacuum. Until its expiration date, each grey-top blood tube is warranted by Becton to have 90% or more of its vacuum remaining at an estimated deterioration rate of no greater than 5% per year. This loss of vacuum would affect only the efficiency of the medical professional's ability to draw a blood specimen. If a particular tube draws inefficiently due to lack of vacuum, a medical professional would ordinarily discard it and use another grey-top (or other color top) tube.

Since they are inorganic compounds, the preservatives found in the tubes, sodium fluoride and potassium oxalate, oxidize very slowly and even in a vacuum-decreasing environment, are unlikely to deteriorate significantly for many years. More importantly, there is *no possibility* that a ''false positive'' for any drug or its metabolites could occur because of an expired blood tube either from vaccum problems or from deteriorated preservatives.

The presence or absence of the chemical additives contained in grey-top tubes does not affect the detection of any of the drugs tested for in FRA's post-accident testing panel, with the exception of parent cocaine. Sodium fluoride in the grey-top tube contributes to the detectability of parent cocaine in blood, by helping to stabilize the spontaneous conversion of the parent drug in vitro to cocaine metabolites. The concentration (or absence) of parent cocaine is helpful principally in detecting recency of use.

Grey-top tubes are also helpful in conducting the alcohol analysis. Sodium fluoride is widely established as an effective antimicrobial agent in retarding endogenous alcohol production. The production of ethyl alcohol in the body is a well known phenomenon, especially in post-mortem samples. In the presence of certain contaminating microorganisms and extreme conditions, alcohol identical to that found in alcoholic beverages may be created by the body after death, causing alcohol to appear in certain body fluids and/or tissues without having been ingested. Obviously, endogenous production of alcohol is of concern in the post-accident alcohol testing of both surviving and deceased crew members.

In FRA's post-accident testing, there have been several cases where, given severe trauma and the correct environmental factors, alcohol was produced post-mortem in detectable amounts, even in the presence of fully potent sodium fluoride. Using grey-topped tubes helps in this determination, but FRA has taken and will continue to take whatever scientific and technical steps are necessary to protect post-accident specimen donors from an incorrect interpretation of a positive test result. Among the procedures used by FRA to rule out an alcohol positive on a deceased employee as coming from endogenous production are: examining other tissues or fluids (i.e. urine, brain, vitreous) which may have been protected from trauma or decomposition; determining that the distribution of alcohol in the various body fluids and tissues is inconsistent with that expected in a living person; detecting the presence of other volatiles or physiological byproducts which can sometimes also be present during post-mortem decomposition; repeating analyses of a specimen kept at room temperature to determine if the alcohol concentration is increasing; and determining the identity of any microorganisms present to assess whether they have alcohol-producing capability.

**Authority:** 49 U.S.C. 20103, 20107, 20111, 20112, 20113, 20140, 21301, 21304, and 49 CFR 1.49(m).

Issued in Washington, DC on December 21, 2001.

**George A. Gavalla,**

*Associate Administrator for Safety.*

[FR Doc. 01–32048 Filed 12–28–01; 8:45 am]

BILLING CODE 4910–06–P

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Docket Number MARAD–2001–11241Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Sovereign of Malahide.*

**SUMMARY:** As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. The vessel currently has permission to operate in Southeast Alaska under a small vessel waiver granted pursuant to actions in Docket MARAD–2001–10780. The current application involves a new operating area. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

**DATES:** Submit comments on or before January 30, 2002.

**ADDRESSES:** Comments should refer to docket number MARAD–2001–11241. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–2307.

**SUPPLEMENTARY INFORMATION:** Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

**Vessel Proposed for Waiver of the U.S.-build Requirement**

(1) Name of vessel and owner for which waiver is requested.Name of vessel: *Sovereign of Malahide.* Owner: Timothy B. White.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''L.O.A. 64 ft; Displacement 80 tons ± Actual weight''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:''Crewed Charter Vessel.'' ''California and Washington State.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1973. Place of construction: Dublin, Ireland.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''It is my opinion if waiver status granted it will not significantly impact other operators. In my extensive research I have not encountered any opposition and have been encouraged by numerous charter companies to obtain proper documentation due to the significant demand for vessels such as the subject vessel. Other operators have expressed an interest and desire to utilize this vessel.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''The vessel will not impact U.S. shipyards. The Vessel has been undergoing extensive refit, repair and updating over the past 24 months. Much of the work was performed by Sovereign Marine Services Inc., located in La Conner WA. Many other U.S. Subcontractors and suppliers were also used. The cost of such is in excess of $1,000,000.00. All documentation of such work and repairs is available for review should you require.''

Dated: December 26, 2001.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 01–32097 Filed 12–28–01; 8:45 am]

BILLING CODE 4910–81–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Child Passenger Protection Education Grants

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Announcement of grants for child passenger protection education.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) announces a grant program under Section 2003(b) of the Transportation Equity Act for the 21st Century (TEA–21) to implement child passenger protection programs that are designed to prevent deaths and injuries to children, educate the public concerning the proper installation of child restraints, and train child passenger safety personnel concerning child restraint use. This notice solicits applications from the States, the District of Columbia, Puerto Rico, the U.S. Territories and the Indian Tribes through the Secretary of the Interior.

**DATES:** Applications must be received by the office designated below on or before January 31, 2002.

**ADDRESSES:** Applications must be submitted to the appropriate National Highway Traffic Safety Administration Regional Administrator.

**FOR FURTHER INFORMATION CONTACT:** For program issues contact Ms. Marlene Markison, State and Community Services, NSC–01, NHTSA, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–2121. For legal issues contact Mr. John Donaldson, Office of the Chief Counsel, NCC–30, NHTSA, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–1834.

**SUPPLEMENTARY INFORMATION:**

**Background**

Motor vehicle crashes remain the leading cause of unintentional injury-related deaths among children for every age from 4 to 14 years, despite an 11 percent decline in the motor vehicle occupant death rate for children under age 15 from 1988 to 2000. During the same time period, the motor vehicle occupant nonfatal injury rate among children under age 15 has increased by 7 percent. Motor vehicle injuries and

fatalities occur when children ride unrestrained or are improperly restrained. This grant program is intended to help reduce injuries and deaths by educating the public about the importance of correctly installing and using child safety seats, booster seats and seat belts.

*1. Children Riding Unrestrained*

Approximately 20–25 percent of children ages 1 through 15 years ride unrestrained. Child safety seats reduce the risk of fatal injury in a crash by 71 percent for infants (less than 1 year old) and by 54 percent for toddlers (1–4 years old). In 2000, there were 529 passenger vehicle occupant fatalities among children under 5 years of age. Of those 529 fatalities, where restraint use is known, 240 (47.4 percent) were totally unrestrained. The problem of riding unrestrained is not limited to infants and young children. From 1975 through 2000, the lives of an estimated 4,816 children were saved by the use of child restraints (child safety seats or adult safety belts). Among children under age 15 who were killed as occupants in motor vehicle crashes, where restraint use was known, in 2000, 56 percent were not using safety restraints at the time of the collision.

Examination of the demographics of children killed in motor vehicle crashes (for which the most complete data available is 1999) shows that safety restraint use differs markedly by race. For example, while somewhat less than half (46.5 percent) of white children up to age 9 riding in passenger motor vehicles were using safety restraints at the time of their deaths, that was true of less than one-third (30.4 percent) of black children. Native American children under age 15 have a motor vehicle occupant death rate twice that of white children. (Injury and fatality data for other minority groups is currently being collected.) Restraint use is also lower in rural areas and low-income communities. Lack of access to affordable child safety seats and booster seats contributes to a lower usage rate among low-income families. However, research shows that 95 percent of low-income families who own a child safety seat use it. Improving access to affordable child restraint systems and educating parents and caregivers about proper installation and use are key components to improving use rates in these communities.

*2. Misuse of Child Safety Seats and Improper Seating Positions*

In 2000, 95 percent of infants (children under age 1) were restrained while riding in motor vehicles, as were 91 percent of children ages 1 to 5. However, it is estimated that approximately 80 percent of children who are placed in child safety seats are improperly restrained. Furthermore, adult safety belts do not adequately protect children ages 4 to 8 (about 40 to 80 pounds) from injury in a crash. Although car booster seats are the best way to protect them, only 6 percent of booster-age children are properly restrained in car booster seats.

In addition, there is a high risk of severe injury or fatality to children riding in the front seat of vehicles equipped with a passenger side air bag, due to the deployment force of the air bag. However, even if the air bag is shut off or there is no air bag, the back seat is the safest place for children to ride. Under no circumstances should a parent place a rear-facing infant seat in front of an air bag. It is estimated that children ages 12 and under are 36 percent less likely to die in a crash if seated in the rear seat of a passenger vehicle.

Furthermore, children are not cargo; they should not ride in the rear of pickup trucks. In 2000, 135 people died as a result of riding in the cargo area of pickup trucks. Nearly half of these were children and teenagers.

Child passenger safety professionals, educators, emergency personnel and others need to be adequately trained on all aspects of child restraint use in order to help reduce the problems of misuse and encourage the safest seating positions for children riding in motor vehicles. In addition, parents and caregivers need easily accessible locations where they can receive information on choosing the correct child safety seat for their child, and identifying which child safety seats are compatible with various types of passenger motor vehicles. Parents and caregivers also need to know how to properly install a child safety seat, how to properly secure their child into that seat, and that the safest position in a vehicle is the back seat, away from front passenger air bags and not in the cargo area of pick-up trucks.

With these concerns in mind, the Transportation Equity Act for the 21st Century (TEA–21), which the President signed into law on June 9, 1998, established a grant program under Section 2003(b), to promote child passenger protection education and training and authorized $7.5 million each year for fiscal years 2000 and 2001. In the DOT Appropriation Act of 2002, Congress provided $7.5 million to fund the Child Passenger Protection Education grant program for fiscal year 2002.

**Grants for Child Passenger Protection**

Section 2003(b) provides Federal funds to States for activities that are designed to prevent deaths and injuries to children; educate the public concerning the design, selection, placement, and installation of child restraints; and train and retrain child passenger safety professionals, police officers, fire and emergency medical personnel, and other educators concerning all aspects of child restraint use. A State may expend the funds itself or elect to distribute some or all of the funds to carry out the public education and training activities as grants to political subdivisions of the State or appropriate private entities. States are encouraged to direct funds obtained through this grant program to organizations that can deliver training and education to ensure positive impact in minority and low-income communities where lack of child passenger protection is especially severe. Section 2003(b) provides that the Federal share of the cost of a program carried out with the grant funds is not to exceed 80 percent. A State that receives a grant must submit a report describing the program activities carried out with the funds.

**Application Procedures**

*1. Use of Funds*

To be eligible for funding under Section 2003(b), a State must submit an application that addresses how the State will implement child passenger protection programs that meet each of the three requirements listed below. For the education and training components, the grant application must identify expected program accomplishments, such as the estimated number of public education messages to be distributed (e.g. public service announcements or printed materials) and the type of audience to be targeted by these messages (e.g. minority or low-income communities); the estimated number of and type of training classes conducted and the individuals or groups to be trained (e.g. representing minority, rural or low-income communities); the number of child safety seat clinics or check-ups performed; and the number of inspection stations established. A State is encouraged to identify the proposed locations of child safety seat clinics, check-ups and inspection stations, specifying the target population to be served. Specifically, the State must implement a child passenger protection program that:

(a) Is designed to prevent deaths and injuries to children. The State should provide a statement describing how its

program supports efforts to prevent deaths and injuries to children.

(b) Educates the public on all aspects of child passenger safety. The public education program may include strategies that emphasize the four steps to child restraint use: Infant seats for babies, forward facing child safety seats for toddlers, booster seats for young children, and seat belts for older children. It may also include strategies that increase use of appropriate restraints and proper seating positions among targeted populations (e.g., minority, rural, low-income, or special needs populations), or develop and implement child safety seat clinics and/or permanent locations where consumers can have child safety seats and booster seats inspected. Additional information under public education may be included relevant to proper use of child restraint systems, booster seats, proper seating positions relative to air bag safety and cargo areas of pick-up trucks, and Federal Motor Vehicle Safety Standard 225—a standardized child safety seat system known as Lower Anchors and Tethers for Children (LATCH).

At a minimum, the public education program must:

(1) Provide a summary of the information that the State intends to include or develop in the public education program. The information must address at least the following topics:

- All aspects of proper installation of child restraints using standard seat belt hardware, supplemental hardware, and modification devices (if needed), including special installation techniques;
- Appropriate child restraint design, selection, and placement [NHTSA interprets this to include instruction about proper seating positions for children in air bag equipped vehicles]; and
- Harness threading and harness adjustment on child restraints.

(2) Include a description of the public education information methods that the State intends to employ, how these messages will be delivered to the target population, and expected accomplishments. The methods could include billboards, public service announcements, and published materials. It is also important to deliver this information in the language of the targeted group.

(c) Trains and retrains child passenger safety professionals, police officers, fire and emergency medical personnel, and other educators concerning all aspects of child restraint use. At a minimum, States should include in the application a description of or reference to the curricula that the State will use to train and retrain child passenger safety experts to reach the targeted population and expected accomplishments.

All persons selected for training and retraining as child passenger safety professionals should achieve and maintain at least some minimum standards of expertise. In collaboration with several partners, NHTSA has developed several model curricula including: ''Mobilizing America to Buckle Up Children'' and ''Operation Kids'' for law enforcement officers; and the ''Standardized Child Passenger Safety Training Program'' for child passenger safety professional candidates. States are not restricted to using only these curricula, but States are encouraged to incorporate the learning objectives of these courses into the training and retraining provided to child passenger safety experts. Funding for this grant program is intended to help States develop and sustain adequate cadres of persons with technical expertise in child passenger protection who will directly serve the public through child safety seat clinics, checkpoints, workshops, inspection stations and other training and educational opportunities.

*2. Certification*

The State must submit certifications that: (i) It will use the funds awarded under this grant program exclusively to implement a child passenger protection program in accordance with the requirements of Section 2003(b) of P.L. 105–178 (TEA–21); (ii) It will administer the funds in accordance with 49 CFR Part 18; and (iii) It will provide to the NHTSA Regional Administrator no later than 15 months after the grant award a report of activities carried out with grant funds and accomplishments to date.

*3. Eligibility Requirements*

Eligibility is limited to the 50 States, the District of Columbia, Puerto Rico, the U.S. Territories (which include the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands) through their Governor's Office of Highway Safety, and Indian Tribes through the Secretary of the Interior.

**Award Procedures**

The amount available for this program in fiscal year 2002 is $7,500,000. In FY 2000, NHTSA awarded $7.5 million to 47 States, the District of Columbia, Puerto Rico, 4 U.S. Territories and the Indian Nations. In FY 2001, NHTSA awarded $7.5 million to 48 States, the District of Columbia, Puerto Rico, 4 U.S. Territories and the Indian Nations. A new application is required to seek an award of fiscal year 2002 funds. Awards to applicants meeting the requirements of this notice will be made based upon the formula used for Section 402 apportionment, subject to the availability of funds. The amount awarded to each State qualifying under this program shall be determined by multiplying the amount appropriated for this grant program for the fiscal year by the ratio that the amount of funds apportioned to each such State under 23 U.S.C. 402 for the fiscal year bears to the total amount of funds apportioned to all such States under Section 402 for such fiscal year. Applicants will be required to submit to NHTSA within 30 days of notification that an award is made, a program cost summary (HS Form 217) obligating the Section 2003(b) funds to child passenger protection education programs. The Federal funding share may not exceed 80 percent of the program cost, and States should clearly identify their share in the program cost summary (HS Form 217).

Each State must submit one original and two copies of the application package to the appropriate NHTSA Regional Administrator. Only complete application packages submitted by a Governor's Highway Safety Representative and received on or before January 31, 2002, will be considered for funding in fiscal year 2002.

**Report Requirements**

A State that receives a grant must submit a report describing the activities carried out with the grant funds and the accomplishments to date. The report must be submitted to the NHTSA Regional Administrator no later than 15 months after the grant is awarded.

At a minimum, the report must contain the following:

1. A description of how the State's child passenger protection program is supporting efforts to prevent deaths and injuries to children.

2. For the education component:

- A summary of the public education methods developed and how programs were delivered to the targeted population.
- The number of public education messages distributed (e.g. public service announcements or printed materials) and the type of audience targeted by those messages (e.g. minority or low-income communities);
- The number of child safety seat clinics or check-ups performed, and the number of inspection stations established. A State must also include

the locations of child safety seat clinics, check-ups and inspection stations, specifying the target population served.

3. For the training component:

• The number of and type of training classes conducted and the individuals or groups trained (e.g. representing minority, rural or low-income communities);

**NHTSA Publications Available To Support Public Education**

A number of NHTSA publications are available through the *Traffic Safety Materials Catalog* that address child passenger safety program topics, including targeted education messages such as ''Four Steps for Kids;'' ''Boost 'em Before You Buckle 'em;'' ''Sálvele la Vida a Su Bebé,'' and ''Kids Aren't Cargo.'' These materials may be ordered from the NHTSA web site at >HTTP://WWW.NHTSA.DOT.GOV< or contacting the Media and Marketing Division, NTS–21 by fax at (202) 493–2062.

* * * * *

Issued on: December 21, 2001.

**Jeffrey W. Runge,**

*Administrator, National Highway Traffic Safety Administration.*

[FR Doc. 01–32026 Filed 12–28–01; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–290 (Sub–No. 218X)]**

### Norfolk Southern Railway Company—Abandonment Exemption—in Buchanan County, VA

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.63-mile line of railroad between milepost KP–0.0 and KP–0.63 at Kopp, Buchanan County, VA. The line traverses United States Postal ZIP Code 24066.

NSR has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; (2) any overhead traffic that might have moved on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 30, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 10, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 22, 2002, with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC, 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510. If the verified notice contains false or misleading information, the exemption is void ab initio.

NSR has filed a separate environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 10, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historical preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by December 31, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*

Decided: December 19, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 01–32010 Filed 12–28–01; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by a $1000 filing fee. *See* 49 CFR 1002.2(f)(25).

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–290 (Sub–No. 232X)]**

### Norfolk Southern Railway Company—Abandonment Exemption—in Fayette County, WV

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon a 2.8-mile line of railroad between milepost OH–0.0 at Oak Hill and milepost OH–2.8 at Carlisle, in Fayette County, WV. The line traverses United States Postal Service Zip Code 25901.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years and that overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 31, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 10, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 22, 2002, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, Esq., Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NSR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 4, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by NSR's filing of a notice of consummation by December 31, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "*WWW.STB.DOT.GOV*."

Decided: December 18, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 01–31646 Filed 12–28–01; 8:45 am]

**BILLING CODE 4915–00–P**

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,000. See 49 CFR 1002.2(f)(25).

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–290 (Sub–No. 224X)]**

### Norfolk Southern Railway Company—Abandonment Exemption—in Pike County, KY

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 1.01 miles of its line of railroad between milepost FC–0.0 at Flanary and milepost FC–1.01 at Apache Coal, in Pike County, KY. The line traverses United States Postal Service Zip Code 41501.

Applicant has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic, can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 30, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 10, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 21, 2002, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, Esq., Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. SEA will issue an environmental assessment (EA) by January 4, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by December 31, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: December 17, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 01–31647 Filed 12–28–01; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF VETERANS AFFAIRS

### Research and Development Office; Government-Owned Inventions for Licensing

**AGENCY:** Research and Development Office, VA.

**ACTION:** Notice of government-owned inventions available for licensing.

**SUMMARY:** The inventions listed below by the U.S. Government, as represented by the Department of Veterans Affairs, are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on these inventions may be obtained by Writing to: Mindy Aisen, MD, Department of Veterans Affairs, Director, Technology Transfer Program, Research and Development Office, 810 Vermont Avenue, NW., Washington, DC 20420; Fax: (202) 275–7228; e-mail at *mindy.aisen@mail.va.gov.*

Any request for information should include the number and title for the relevant inventions as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20031.

**SUPPLEMENTARY INFORMATION:** The inventions available for licensing are:

PCT/US00/11943 ''Surgical (IJAT) Tools;''

PCT/US01/10443 ''A Novel Specific Inhibitor of the Cyclin Kinase Inhibitor p21 Waf/Cip1 and Methods of Using the Inhibitor,'' and

PCT/US01/18071 ''Method of Treating Gastrointestinal Diseases Associated with Species of Genus Clostridium.''

Dated: December 19, 2001.

**Anthony J. Principi,**

*Secretary, Department of Veterans Affairs.*

[FR Doc. 01–32069 Filed 12–28–01; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Monday,
December 31, 2001

# Part II

# Department of Transportation

## Federal Aviation Administration

**14 CFR Part 71**

**Proposed Modification of the Cincinnati/Northern Kentucky International Airport Class B Airspace Area; KY; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2001–10912; Airspace Docket No. 00–AWA–6]**

**RIN 2120–AA66**

## Proposed Modification of the Cincinnati/Northern Kentucky International Airport Class B Airspace Area; KY

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

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

**SUMMARY:** This action proposes to modify the current Cincinnati/Northern Kentucky International Airport (CVG) Class B airspace area. Specifically, this action proposes to expand the lateral limits of Area C; reduce the lateral limits of Area F; eliminate Area G; and raise the upper limit of the entire Class B airspace area from 8,000 feet mean sea level (MSL) to 10,000 feet MSL. The FAA is proposing this action to enhance safety, reduce the potential for midair collisions, and to improve the management of air traffic operations in the CVG terminal area. Further, this effort supports the FAA's National Airspace Redesign project goal of optimizing terminal and enroute airspace areas to reduce aircraft delays and improve system capacity.

**DATES:** Comments must be received on or before March 1, 2002.

**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 both docket numbers, FAA–2001–10912/ Airspace Docket No. 00-AWA–6, at the beginning of your comments.

You may also submit comments through the Internet to *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 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, ASO–500, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, 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 airspace 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 Nos. FAA–2001–10912/Airspace Docket No. 00–AWA–6.'' 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.* Internet users may reach the FAA's web page at *http://www.faa.gov* or the **Federal Register**'s web page at *http://www.access.gpo.gov/nara* for access to recently published rulemaking documents.

Any person may also obtain a copy of this NPRM by submitting a request to the FAA, 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 of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### Related Rulemaking Actions

On May 21, 1970, the FAA published the Designation of Federal Airways, Controlled Airspace, and Reporting Points Final Rule (35 FR 7782). This rule provided for the establishment of Terminal Control Airspace (TCA) areas (now known as Class B airspace areas).

On June 21, 1988, the FAA published the Transponder With Automatic Altitude Reporting Capability Requirement Final Rule (53 FR 23356). This rule requires all aircraft to have an altitude encoding transponder when operating within 30 nautical miles (NM) of any designated TCA (now known as Class B airspace areas) primary airport from the surface up to 10,000 feet MSL. This rule excluded those aircraft that were not originally certificated with an engine-driven electrical system (or those that have not subsequently been certified with such a system), balloons, or gliders.

On October 14, 1988, the FAA published the Terminal Control Area Classification and Terminal Control Area Pilot and Navigation Equipment Requirements Final Rule (53 FR 40318). This rule, in part, requires the pilot-in-command of a civil aircraft operating within a Class B airspace area to hold at least a private pilot certificate, except for a student pilot who has received certain documented training.

On December 17, 1991, the FAA published the Airspace Reclassification Final Rule (56 FR 65638). This rule discontinued the use of the term ''Terminal Control Area'' and replaced it with the designation ''Class B airspace area.'' This change in terminology is reflected in the remainder of this NPRM.

### Petitions

On April 28, 1999, Sportsman's Market, Inc., (herein after referred to as ''the petitioner'' or ''Sporty's'') petitioned the FAA for a modification to the current CVG Class B airspace area by raising the upper limit and modifying the lateral dimensions of certain sub-areas. Specifically, the petitioner requested that the FAA raise the upper limit of the CVG Class B airspace area from 8,000 feet MSL to 8,400 feet MSL, lower the floor of area F and change its

lateral boundaries on the western side to include part of area G, and eliminate the rest of area G. The petitioner is of the opinion that the existing CVG Class B rule causes significant adverse economic effects to businesses located at Clermont County Airport because the airport is located under, but not in, an area of Class B airspace. Essentially, the petitioner contended in part that the 25 NM outer ring impedes access to Clermont County Airport. However, as the floor of the Class B airspace area is 6,000 feet MSL in the vicinity of the airport, the airport is located outside of, and beneath the Class B airspace area. This configuration provides access to the airport, and businesses located at the airport, for pilots not desiring to participate in Class B services.

On May 12, 1999, the Aircraft Owners and Pilots Association (AOPA) petitioned the FAA to reconsider the dimension of the current Class B airspace area. Specifically, AOPA requested that the outer ring of the airspace be reduced to 20 NM from 25 NM and that the reference point for the Class B airspace area be centered on the very high frequency omnidirectional radio range/tactical air navigational aid (VORTAC).

This rulemaking proposal will address the concerns and substance of both the Sportsman's Market, Inc., and the AOPA petitions which will be discussed later in the document. Although AOPA's petition stated that it was a request for reconsideration, the relief sought by AOPA could not be accomplished without rulemaking.

**Related Rulemaking**

The TCA (now Class B airspace) program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carriers or military aircraft, and another GA aircraft. The basic causal factor common to these conflicts was the mix of aircraft operating under visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of these airspace areas afford the greatest protection for the greatest number of people by giving air traffic control (ATC) increased capability to proved aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

The standard configuration of these areas contains three concentric circles centered on the primary airport extending to 10, 20, and 30 NM, respectively. The standard vertical limit of these airspace areas normally should not exceed 10,000 feet above MSL, with the floor established at the surface in the inner area and at levels appropriate to the containment of operations in the outer areas. However, variations if this configuration may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to the terminal area.

On November 30, 1998 the FAA published a final rule establishing the CVG Class B airspace area and revoking the existing Class C airspace area (63 FR 65972). The new Class B airspace area, implemented on July 15, 1999, consisted of that airspace within a 25-NM radius of the CVG International Airport, from the surface or higher up to and including 8,000 feet above MSL.

**Pre-NPRM Public Input**

FAA policy requires a biennial evaluation of existing Class B airspace areas to ensure that the airspace is configured to enhance safety and that it is being used efficiently. Based on a need for this evaluation, an Ad Hoc Committee, representing a cross section of aviation users, was formed to determine if the dimensions of the CVG Class B airspace area were meeting the original intent and, if needed, to develop recommendations for modifications to that airspace. The Committee held a series of meetings between November 1999 and April 2000.

As announced in the **Federal Register** on June 28, 2000 (65 FR 39979) pre-NPRM informal airspace meetings were held on August 16 and 17, 2000, in Cincinnati, OH, to allow local interested airspace users an opportunity to present input on planned modifications to the CVG Class B airspace area and recommendations from the Ad Hoc group. The proposed modifications discussed in this notice were developed as a result of an FAA airspace analysis completed in accordance with the agency's policy to periodically review Class B airspace area designations, and the recommendations submitted by the Ad Hoc Committee. All comments received during the informal airspace meetings and the subsequent comment period were considered and are addressed in this NPRM.

**Discussion**

What follows is a discussion of the proposal, analysis of the comments received during the pre-NPRM stage, and petitions received.

**Vertical Dimension Modification**

Seven commenters expressed opposition to the proposed raising of the CVG Class B airspace area ceiling to 10,000 MSL. Reasons for this opposition included: the impact on the ability of VFR traffic to fly over the top of the Class B airspace area (without the need for supplemental oxygen); the fact that other, apparently busier, Class B terminals have ceilings below 10,000 feet MSL; and, that air carrier aircraft operating above 8,000 feet do not need expanded Class B airspace because the existing Mode C veil requirements and the equipage of air carrier aircraft with the Traffic Alert and Collision Avoidance System (TCAS) already provide adequate protection.

The FAA does not agree with these comments. The proposed increase in the Class B airspace area ceiling would not deny VFR aircraft access to the airspace between 8,000 feet and 10,000 feet MSL. It is anticipated that the proposed higher ceiling would not have a significant adverse impact on VFR traffic based on a finding by the Ad Hoc Committee that, over a 60-day period, only 70 VFR flight tracks were observed between 8,000 and 10,000 feet, within 25 miles of CVG. The FAA believes that the proposed 10,000-foot ceiling would, in fact, enhance the safety of VFR operations in that stratum as these altitudes currently contain a significant volume of turbojet-powered air carrier, general aviation, and cargo aircraft that are climbing rapidly to 10,000 feet to accelerate above 250k; or are descending to 10,000 feet for speed reduction prior to further descent. While TCAS certainly enhances safety, it should be noted that the TCAS requirement does not currently apply to cargo aircraft. A sizeable percentage of CVG's traffic volume consists of large turbojet-powered cargo aircraft. In a separate regulatory action, the FAA issued a Notice of Proposed Rulemaking on November 1, 2001, proposing to add collision avoidance system requirements for certain cargo airplanes (66 FR 55506). Notwithstanding the outcome of that effort, the higher ceiling would augment the safety benefits of the Mode C veil and TCAS by ensuring that ATC has communications with all aircraft operating in that stratum. This would not only reduce controller

workload by enabling ATC to ascertain VFR pilot intentions, route of flight, and destination, but would also allow controllers to offer assistance to such VFR aircraft in avoiding the heavy concentrations of traffic transitioning vertically through these altitudes.

Additionally, although other terminals may have Class B airspace area ceilings below 10,000 feet, the design of each Class B airspace area is unique, site specific, and is based on a variety of factors such as airspace complexity and ATC operational requirements. Operational requirements were in part factors in the development of this proposal. Another factor is that the Cincinnati/Northern Kentucky terminal airspace is bounded by Restricted Areas R–3403A and R–3404B on the west, and the Buckeye military operations area on the east. These areas limit ATC's flexibility in assigning arrival and departure tracks in two quadrants of the terminal area. Also, other terminal areas near CVG have ATC delegated airspace up to 10,000 feet MSL. The proposed raising of the CVG Class B ceiling would simplify terminal area ATC procedures by reducing coordination requirements and frequency changes because, for example the CVG air traffic controller could have the ability to transfer a departing aircraft directly to the center controller without a requirement for the pilot to contact the adjacent terminal facility controller. Indianapolis Air Route Traffic Control (ARTCC) currently delivers aircraft inbound to CVG at 11,000 feet MSL via one of four arrival transition areas (ATA) located northwest, northeast, southeast, or southwest of the airport. Once in the terminal area, these airport arrivals are generally descended to 10,000 feet; while the departures normally climb up to 8,000 or 9,000 feet. When the departures have been laterally separated from the arrivals by ATC, the departures are issued a climb to 13,000 feet and handed off to Indianapolis ARTCC. Concurrently, once this lateral separation is established, the arrivals are given a descent to a lower altitude. This generally cannot occur until the arrivals are abeam the airport, on a downwind leg. With the existing 8,000 feet ceiling, traffic arriving at CVG often must fly 30–35 NM outside of the Class B airspace, depending on the runway in use and the direction of arrival into the terminal area. For example, when the airport is using Runways 18L and 18R for landings (approximately 86 percent of the time), aircraft arriving through the southeast or southwest ATAs are required to travel about 30 flying miles at 10,000 feet or 11,000 feet, above the existing CVG Class B airspace area, before reaching a point abeam the airport where they can be descended into the Class B airspace area. A similar situation exists for aircraft arriving through the northwest and northeast ATAs when Runways 36L and 36R are in use.

The Ad Hoc Committee did not reach a consensus regarding the issue of raising the Class B airspace area ceiling to 10,000 feet MSL. However, the FAA believes that the airspace analysis supports the increase and is including the proposal in this notice to obtain additional comment on the matter before any final decision is made. If the FAA keeps the Class B ceiling at a lower altitude (i.e., 8,000 feet MSL), more departing aircraft will be required to level off prior to reaching an altitude where they can accelerate above 250 knots. This is not cost effective and does not contribute to system efficiency. Raising the altitude to 10,000 feet MSL decreases the chances that ATC will need to require a departing aircraft to level off prior to cruise altitude. The FAA believes that raising the altitude of the area would lessen economic impacts and increase system efficiency for aircraft operating into and out of CVG. Raising the Class B ceiling to 8,400 feet MSL as requested by Sporty's, would not provide sufficient Class B airspace needed to contain those arriving aircraft that must currently travel a significant distance above Class B airspace as discussed above. For the original establishment of the CVG Class B airspace area, the FAA's analysis indicated that an 8,000 feet MSL ceiling would be sufficient. Operational experience with this configuration since the July 15, 1999 implementation indicates that a 10,000 feet MSL ceiling would benefit safety and efficiency in the CVG terminal area.

**Lateral Dimension Modification**

Several commenters contended that the 25–NM ring of the Class B airspace area is excessively large and that the outer ring of the Class B airspace area should be reduced to 20 NM. Conversely, two commenters expressed concern about whether the proposed reduction of the outer ring from 25 miles to 20 miles would still ensure that aircraft are contained within the Class B airspace area throughout all phases of the approach.

In this action, the FAA is proposing to reduce the limit of the outer ring in the east and west quadrants (i.e., portions of area G and area F) to 20 NM. During the rulemaking process to revoke the Class C airspace area and implement a Class B airspace area at CVG, several commenters recommended reducing the size of the proposed area to a 15- to 20-mile radius rather than at that time the proposed 25-mile radius. At that time, the FAA concluded that, because of the high volume of arrival and departure aircraft at the primary airport, it was necessary to use the area between 20–25 NM, including areas F and G. The Class B airspace area became effective on July 15, 1999 (64 FR 17934) with the outer ring set at 25 NM. After the implementation of the Class B airspace area, modifications were made to local ATC procedures to improve the management of aircraft operations into and out of CVG. Over the past 3 years, the FAA has been studying aircraft operations in the CVG terminal area to assess airspace use and air traffic control procedures and requirements, particularly in light of the conversion of CVG terminal airspace from Class C to Class B. As part of this effort, FAA representatives met on numerous occasions with local pilots, user groups, and airport officials seeking feedback on the effectiveness of the terminal area airspace configuration. These feedback sessions, along with the internal ongoing review, were conducted to determine whether the Class B airspace area was configured to ensure the most efficient use of airspace, and to ensure the safe, orderly, and expeditious flow of traffic. Based on its review, the FAA determined that, based on procedural changes, arrival aircraft are not now being directed into the airspace to the east and west of CVG. Further, operational experience also revealed that departure aircraft on the east and west sides have already reached an altitude between 11,000 to 12,000 feet MSL by the time they pass the 20 NM Class B airspace ring. Another factor that the FAA evaluated is the proximity to special use airspace to the CVG Class B airspace area. On the west side, restricted areas R–3404A and B are situated less than 10 NM west of the current 25 NM Class B boundary. This allows only a small corridor for VFR pilots transiting north and south between the restricted areas and the CVG Class B airspace area who elect not to participate in Class B services. Reducing the outer ring to 20 NM in this area would provide additional airspace for pilots transiting north and south or choosing to circumnavigate the Class B area. Similarly, on the east side, the Buckeye military operations area (MOA) is located approximately 10 NM east of the Class B airspace boundary. Reducing the outer ring to 20 NM in this area would also provide VFR aircraft with a

wider corridor to circumnavigate the Class B airspace area and remain clear of the Buckeye MOA. Additionally, the airspace analysis revealed that the current airspace north and south of CVG is necessary to accommodate arrival traffic and provide needed airspace for simultaneous parallel ILS approaches. A third runway is scheduled to become operational at CVG in 2005. When operational, the third runway is expected to provide a 26% capacity improvement at CVG through the introduction of simultaneous triple ILS approaches.

In their petitions, both Sporty's and AOPA requested adjustments to the outer limits of the CVG Class B airspace area. The retention of the outer ring at 25 NM on the north and south sides will ensure that sufficient Class B airspace is available to contain those procedures and accommodate the projected increase in traffic at CVG. Based on the operational experience gained since the inception of the Class B airspace area and the recommendations of the Ad Hoc committee, the FAA believes that Class B airspace is not required between the 20 NM and 25 NM rings to the east and west of CVG and that the modification of the outer ring as described above would enhance the efficient use of airspace without adversely affecting safety.

**Other Comments**

One commenter suggested that a corridor be developed through the Class B airspace area, within which the Mode C veil requirement would not apply.

The FAA does not have the latitude to exclude areas within a 30–NM radius of the Class B airspace primary airport from the requirement for an altitude encoding transponder (this area is commonly referred to as the ''Mode C Veil''). The Mode C veil requirement originated from several Congressional mandates (Public Law 100–202, etc.) that the FAA issue regulations requiring that all aircraft operating in certain terminal airspace areas be equipped with a transponder with Mode C. On June 21, 1988, the FAA issued a rule requiring that, as of July 1, 1989, all aircraft, with certain exceptions, operating within 30 miles of any designated terminal control area (now Class B airspace area) primary airport must be equipped with a transponder with Mode C (53 FR 23368). However, the commenter is advised that FAA included provisions in 14 CFR 91.215(d) to allow for ATC-authorized deviations from this requirement, under certain conditions, to accommodate non-transponder operations to, from, or within the Mode C veil.

One commenter stated that the FAA should use physical features instead of radials to describe the boundaries of the Class B airspace area. In its petition, AOPA requested that the reference point for the Class B airspace area be centered on the Cincinnati VORTAC as opposed to the airport.

The Class B airspace area description proposed in this notice is based on the recommendations of the Ad Hoc Committee and represents only minor changes to the existing format used to describe the lateral dimensions of the area. The current and proposed boundary descriptions consist of a mix of prominent landmarks, latitude/longitude coordinates, radials from the Cincinnati VORTAC, and arcs of the airport. Considering the availability of landmarks in the area, the FAA believes that this mix of descriptors should effectively assist pilots in identifying the lateral boundaries of the Class B airspace area. The FAA will consider the addition of a very high frequency omnidirectional radio range radial/Distance Measuring Equipment (DME) cross-reference table to the Cincinnati terminal area chart, similar to the tables found on the Los Angeles and San Diego terminal area charts, to define various points of the CVG Class B airspace area. This table would provide radial/DME references to further assist pilots in navigating in the Cincinnati area.

Two commenters recommended that the FAA establish VFR corridors through the Class B airspace area and one commenter recommended the establishment of a VFR/IFR corridor to facilitate transiting the Cincinnati area.

The FAA does not agree with the recommendation to establish VFR corridors because the establishment of such corridors could interfere with safe and efficient operations in the CVG Class B airspace area. Low altitude VFR transition routes have been published on the reverse side of the Cincinnati VFR Terminal area chart to assist pilots since the original inception of the Class B airspace area. If the proposed modifications are implemented, the transition routes will basically remain the same except for minor adjustments to the suggested altitudes in Area D, to the north and south of the airport. Regarding the recommendation to establish a VFR/IFR corridor, there would be no operational advantage to be gained over the services currently provided by ATC to assist both VFR and IFR overflights in avoiding the high concentrations of IFR traffic.

**The Proposal**

The FAA proposes to amend 14 CFR part 71 by modifying the CVG Class B airspace area. Specifically, this action (depicted on the attached chart) proposes to expand the lateral limits of Area C to the north and south of the airport; modify the lateral limits of Area F on the east and west sides of the Class B area; eliminate Area G; and raise the upper limit of the Class B airspace area from 8,000 feet MSL to 10,000 feet MSL. These modifications would better accommodate nonparticipating aircraft operations by providing both easier access to satellite airports, and additional airspace on the east and west sides for aircraft desiring to circumnavigate the CVG Class B airspace area. In addition, these modifications would improve the management of air traffic operations in the CVG terminal area, and enhance safety by extending Class B airspace protection to a significant volume of aircraft currently operating between 8,000 feet MSL and 10,000 feet MSL. This proposed action supports various efforts to enhance the efficiency and capacity of the National Airspace System, such as the National Airspace Redesign and the Operational Evolution Plan.

**Area A and Area B.** The FAA is not proposing any changes to the lateral dimensions of Area A or Area B.

**Area C.** The FAA proposes to modify Area C by expanding the boundaries of Area C to the north and south of the airport. This modification would incorporate into Area C, two segments of the Class B airspace area that are currently contained within Area D. Specifically, to the north of the airport, the FAA proposes to extend Area C northward to incorporate that part of Area D airspace that lies west of the extended instrument landing system (ILS) localizer course for Runway 18L, between the 20– and 25–NM arcs of the airport. To the south of the airport, the FAA proposes to extend Area C southward to incorporate that portion of Area D that lies west of the extended ILS localizer course for Runway 36R, between the 20– and 25–NM arcs of the airport. The effect of extending Area C as described, would be to lower the floor of Class B airspace in the affected segments from the current 3,500 feet MSL to 3,000 feet MSL. The reason for this change is to provide additional airspace needed to ensure that the required 1,000 feet vertical separation is maintained while multiple aircraft are being radar vectored for simultaneous ILS approaches.

**Area D.** The FAA proposes to modify Area D to the north and south of the airport as a result of the expansion of Area C as described above. This modification would reduce the size of

the Area D segments located to the north and south of the airport. The Area D segments located to the east and west of the airport would not be changed by this proposal.

**Area E.** No changes are proposed to the lateral dimensions of Area E.

**Area F.** The FAA proposes to reduce the overall size of Area F by eliminating certain portions of Area F, between 20 NM and 25 NM, located to the west and east of the airport. On the west side, the portion of Area F that lies within an area bounded by the 20– and 25–NM arcs of the airport, and between the CVG VORTAC 247° radial clockwise to the CVG VORTAC 297° radial, would be eliminated. To the east of the airport, the portion of Area F bounded by the 20– and 25–NM arcs of the airport, and between the CVG VORTAC 056° radial clockwise to the CVG VORTAC 116° radial, would also be eliminated. The FAA proposes to further modify Area F by incorporating two small sections of Area G. Specifically, Area F would absorb small segments of airspace in the western-most point and the southern tip of the existing Area G. The proposed Area F modifications would benefit nonparticipating VFR operations by accommodating easier access to satellite airports and by providing a larger area for circumnavigation between the Class B airspace area and Restricted Area R–3403 on the west side; and between the Class B airspace area and the Buckeye military operations area to the east of the CVG terminal area.

**Area G.** The FAA proposes to eliminate most of Area G (i.e., that airspace from 6,000 feet MSL to and including 8,000 feet MSL, along the eastern edge of the Class B airspace area), except for two small sections at the western-most and southern-most points in Area G that would be incorporated into Area F, as described above. Three years ago, the FAA believed that it was necessary to have Class B airspace out to 25 NM to the west and to the east of CVG. The FAA believed this was necessary in order to accommodate departure profiles and to provide for the optimum use of the airspace. After two years of operational experience, the FAA now believes that the proposed cutouts to the east and to the west will adequately accommodate the departure profiles. This modification would better accommodate GA operations at satellite airports and allow easier access/transition by nonparticipating aircraft. This would also provide aircraft not desiring to participate in Class B services with additional airspace for circumnavigation of the Class B airspace area on the east side.

The FAA further proposes to raise the upper limit of the Class B airspace area from the current 8,000 feet MSL to 10,000 feet MSL.

This proposal to modify the CVG Class B airspace area would enhance safety and improve the flow of air traffic in the CVG terminal area. In addition, it would better accommodate VFR operations by improving access to satellite airports and providing additional airspace for circumnavigation of the CVG Class B airspace area. The modifications proposed in this notice support the National Airspace Redesign project and the FAA's Operational Evolution Plan.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document would be published subsequently in the Order.

## Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency proposing or adopting a regulation to first make a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this act requires agencies to consider international standards, and use them where appropriate as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs and benefits and other effects of proposed and final rules. An assessment must be prepared only for rules that impose a Federal mandate on State, local or tribal governments, or on the private sector, likely to result in a total expenditure of $100 million or more in any one year (adjusted for inflation.)

In conducting these analyses, FAA has determined: (1) This rule has benefits that justify its costs. This rulemaking does not impose costs sufficient to be considered ''significant'' under the economic standards for significance under Executive Order 12866 or under DOT's Regulatory Policies and Procedures. Due to public interest, however, it is considered significant under the Executive Order and DOT policy. (2) This rule would not have a significant impact on a substantial number of small entities. (3) This rule has no affect on any trade-sensitive activity. (4) This rule does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

The proposed rule would expand the lateral limits of Area C; reduce the lateral limits of Area F; eliminate Area G; and raise the upper limit of the entire Class B airspace area from 8,000 feet MSL to 10,000 feet MSL.

This NPRM would enhance safety in the CVG terminal area and would result in a more efficient use of the airspace. Additionally, this NPRM would generate cost savings to nonparticipating VFR operations by providing a larger area for circumnavigation. Thus, the FAA has determined that this proposed rule would be cost-beneficial.

## Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If the determination is that it would, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

In view of the minimal cost impact of the rule, the FAA has determined that this proposed rule would not have significant economic impact on a

substantial number of small entities. Consequently, the FAA certifies that the rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination.

**International Trade Impact Assessment**

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and therefore create no obstacles to the foreign commerce of the United States.

**Unfunded Mandates Assessment**

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

**Conclusion**

In view of the minimal or zero cost of compliance of the proposed rule and the enhancements to operational efficiency that do not reduce aviation safety, the FAA has determined that the proposed rule would be cost-beneficial.

**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 the Federal Aviation Administration Order 7400.9J, Airspace Designations and reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

*Paragraph 3000—Subpart B—Class B Airspace.*

* * * * *

**ASO KY B Cincinnati/Northern Kentucky International Airport, KY [Revised]**

Cincinnati/Northern Kentucky International Airport (Primary Airport)
(Lat. 39°02′46″N., long. 84°39′44″ W.)
Cincinnati VORTAC (CVG)
(Lat. 39°00′57″ N., long. 84°42′12″ W.)

**Boundaries**

**Area A.** That airspace extending upward from the surface to and including 10,000 feet MSL within a radius of 5 miles from the Cincinnati/Northern Kentucky International Airport.

**Area B.** That airspace extending upward from 2,100 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the 5-mile arc of the airport and the Kentucky bank of the Ohio River northeast of the airport; thence northeast along the Kentucky bank of the Ohio River to the 10-mile arc of the airport; thence clockwise along the 10-mile arc to the Kentucky bank of the Ohio River southwest of the airport; thence north along the Kentucky bank of the Ohio River to the Indiana-Ohio State line (long. 84°49′00″ W); thence north along the State line to Interstate 275; thence northeast along Interstate 275 to Interstate 74; thence east along Interstate 74 to the CVG VORTAC 040° radial; thence southwest along the CVG VORTAC 040° radial to the 5-mile arc of the airport; thence counterclockwise on the 5-mile arc to the point of beginning.

**Area C.** That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of Interstate 275 and the Indiana-Ohio State line (long. 84°49′00″ W); thence north along the Indiana-Ohio State line, to intersect the 20-mile arc of the airport; thence clockwise along the 20-mile arc of the airport to intersect the extended Runway 18L ILS localizer course; then south along the extended Runway 18L ILS localizer course to the 15-mile arc of the airport; thence clockwise on the 15-mile arc to long. 84°30′00″ W.; thence south along long. 84°30′00″ W. to the 10-mile arc of the airport; thence clockwise on the 10-mile arc to the Kentucky bank of the Ohio River; thence west along the Kentucky bank the Ohio River to the 5-mile arc of the airport; thence counterclockwise along the 5-mile arc to the CVG VORTAC 040° radial; thence northeast along the CVG VORTAC 040° radial to Interstate 74; thence west along Interstate 74 to Interstate 275; thence west along Interstate 275 to the point of beginning. That airspace beginning at the intersection of the 10-mile arc southeast of the airport and long. 84°30′00″ W.; thence south along long. 84°30′00″ W. to the 15-mile arc of the airport; thence clockwise along the 15-mile arc to intersect the Runway 36R ILS localizer course; thence south along the Runway 36R ILS localizer course to the 20-mile arc of the airport, thence clockwise along the 20-mile arc to long. 84°49′00″ W.; thence north along long. 84°49′00″ W. to the Kentucky bank of the Ohio River; thence north along the Kentucky bank of the Ohio River to the 10-mile arc of the airport; thence counterclockwise along the 10-mile arc to the point of beginning.

**Area D.** That airspace extending upward from 3,500 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of lat. 39°09′18″ N. and the 10-mile arc northeast of the airport; thence east to the 15-mile arc of the airport; thence clockwise on the 15-mile arc to lat. 38°56′15″ N.; thence west along lat. 38°56′15″ N. to intersect the 10-mile arc of the airport; thence counterclockwise along the 10-mile arc to the point of beginning.

That airspace beginning at the intersection of the Kentucky bank of the Ohio River and lat. 38°56′15″ N. southwest of the airport; thence west along lat. 38°56′15″ N. to the 15-mile arc of the airport; thence clockwise along the 15-mile arc to lat. 39°09′18″ N.; thence east along lat. 39°09′18″ N. to the Indiana-Ohio State line; thence South along the Indiana-Ohio State line to the Kentucky bank of the Ohio River; thence south along the Kentucky bank of the Ohio River to point of beginning. That airspace beginning at the intersection of the 15-mile arc of the airport and the ILS Runway 18L localizer course; thence north along the extended ILS Runway 18L localizer course to the 20-mile arc of the airport; thence clockwise along the 20-mile arc to long. 84°30′00″ W.; thence south along long. 84°30′00″ W. to the 15-mile arc of the airport; thence counterclockwise along the 15-mile arc to the point of beginning. That airspace beginning at the intersection of the 15-mile arc south of the airport and the ILS Runway 36R localizer course; thence south along the extended ILS Runway 36R localizer to the 20-mile arc of the airport; thence counterclockwise along the 20-mile arc to long. 84°30′00″ W.; thence north along long. 84°30′00″ W. to the 15-mile arc of the airport; thence clockwise along the 15-mile arc to the point of beginning.

**Area E.** That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the 20-mile arc of the airport and the Indiana-Ohio State line; thence north along the Indiana-Ohio State line to the 25-mile arc of the airport; thence clockwise along the 25-mile arc to long. 84°30′00″ W.; thence south along long. 84°30′00″ W. to the 20-mile arc of the airport; thence counterclockwise on the 20-mile arc to the point of beginning. That airspace beginning at the intersection of the 20-mile arc of the airport and long. 84°30′00″ W. southeast of the airport; thence south along long. 84°30′00″ W. to the 25-mile arc of the airport; thence clockwise along the 25-mile arc to long. 84°49′00″ W.; thence north along long. 84°49′00″ W. to the 20-mile arc of the airport; thence counterclockwise along the 20-mile arc to the point of beginning.

**Area F.** That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the 25-mile arc north of the airport and long. 84°30′00″ W.; thence clockwise along the 25-mile arc of the airport to the CVG VORTAC 056° radial; thence southwest along the CVG VORTAC 056° radial to the 20-mile arc of the airport; thence clockwise along the 20-mile arc of the airport to the CVG VORTAC 116° radial; thence southeast along the CVG VORTAC 116° radial to the 25-mile arc of the airport; thence clockwise along the 25-mile arc of the airport to long. 84°30′00″ W. south of the airport; thence north along long. 84°30′00″ W. to the intersection of the 10-mile arc of the airport and lat. 38°56′15″ N.; thence east along lat. 38°56′15″ N. to the 15-mile arc of the airport; thence clockwise along the 15-mile arc of the airport to lat. 39°09′18″ N.; thence west along lat. 39°09′18″ N. to the intersection of the 10-mile arc of the airport and long. 84°30′00″ W; thence north along long. 84°30′00″ W. to the point of beginning. That airspace beginning at the intersection of the 25-mile arc of the airport and the Indiana-Ohio State line; thence counterclockwise along the 25-mile arc to the CVG VORTAC 297° radial; thence southeast along the CVG VORTAC 297° radial to the 20-mile arc of the airport; thence counterclockwise along the 20-mile arc of the airport to the CVG VORTAC 247° radial; thence southwest along the CVG VORTAC 247° radial to the 25-mile arc of the airport; thence counterclockwise along the 25-arc of the airport to long. 84°49′00″ W. south of the airport; thence north along long. 84°49′00″ W. to the Kentucky bank of the Ohio River; thence north along the Kentucky bank of the Ohio River to lat. 38°56′15″ N.; thence west along lat. 38°56′15″ N. to the 15-mile arc of the airport; thence clockwise on the 15-mile arc of the airport to lat. 39°09′18″ N.; thence east along lat. 39°09′18″ N. to the Indiana-Ohio State line; thence north along the Indiana-Ohio State line to the point of beginning.

Area G. [Revoked]

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Issued in Washington, DC, on December 21, 2001.

**Reginald C. Matthews,**

*Manager, Airspace and Rules Division.*

[FR Doc. 01–32007 Filed 12–21–01; 3:43 pm]

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Federal Register

Monday,
December 31, 2001

# Part III

# Department of Labor

## Employment and Training Administration

## Labor Surplus Area Classification Under Executive Orders 12073 and 10582; Notice

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Labor Surplus Area Classification Under Executive Orders 12073 and 10582

**ACTION:** Notice.

**EFFECTIVE DATE:** The annual list of labor surplus areas is effective October 1, 2001, for all States.

**SUMMARY:** The purpose of this notice is to announce the annual list of labor surplus areas for Fiscal Year 2002.

**FOR FURTHER INFORMATION CONTACT:** Gay Gilbert, Division Chief, U.S. Employment Service, Employment and Training Administration, 200 Constitution Avenue, NW., Room C 4512, Washington, DC 20210. Telephone: (202) 693–3046.

**SUPPLEMENTARY INFORMATION:** The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. These regulations require the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor is hereby publishing the annual list of labor surplus areas.

In addition, the regulations provide an exceptional circumstance criteria for classifying labor surplus areas when catastrophic events, such as natural disasters, plant closings, and contract cancellations are expected to have a long-term impact on labor market area conditions, discounting temporary or seasonal factors. The FY 2002 Labor Surplus Area list includes Whiteside County, Illinois, an area approved through the exceptional circumstances criteria.

Dated: December 12, 2001.

**Emily Stover DeRocco,**

*Assistant Secretary of Labor.*

### Eligible Labor Surplus Areas

*Procedures for Classifying Labor Surplus Areas*

Labor surplus areas are classified on the basis of civil jurisdictions rather than on a metropolitan area or labor market area basis. Under the basic labor surplus area program procedures, area classifications are made on the basis of civil jurisdictions. Under the program's exceptional circumstance procedures, labor surplus area classifications can be made on the basis of civil jurisdictions, Metropolitan Statistical Areas or Primary Metropolitan Statistical Areas.

Civil jurisdictions are now defined as all cities with a population of at least 25,000 and all counties. Townships of 25,000 or more population are also considered as civil jurisdictions in 4 states (Michigan, New Jersey, New York, and Pennsylvania). In Connecticut, Massachusetts, Puerto Rico, and Rhode Island, where counties have very limited or no government functions, the classifications are done for individual towns.

A civil jurisdiction is classified as a labor surplus area when its average unemployment rate was at least 20 percent above the average unemployment rate for all states (including the District of Columbia and Puerto Rico) during the previous 2 calendar years. During periods of high national unemployment, the 20 percent ratio is disregarded and an area is classified as a labor surplus area if its unemployment rate during the previous 2 calendar years was 10 percent or more. This 10 percent ceiling concept comes into operation whenever the 2-year average unemployment rate for all states was 8.3 percent or above (i.e., 8.3 percent times the 1.20 ratio equals 10.0 percent). Similarly, a ''floor'' concept of 6.0 percent is used during periods of low national unemployment in order for an area to qualify as a labor surplus area. The 6 percent ''floor'' comes into effect whenever the average unemployment rate for all states during the 2-year reference period was 5.0 percent or less.

The classification procedures also provide for the designation of labor surplus areas under exceptional circumstance criteria. These procedures permit the regular classification criteria to be waived when an area experiences a significant increase in unemployment which is not temporary or seasonal and which was not adequately reflected in the data for the 2-year reference period. In order for an area to be classified as a labor surplus area under the exceptional circumstance criteria, the State Workforce Agency must submit a petition requesting such classification to the Department of Labor's Employment and Training Administration.

The current conditions for exceptional circumstance classification are: an area unemployment rate of at least 6.0 percent for each of the 3 most recent months; projected unemployment rate of at least 6.0 percent for each of the next 12 months; and documented information that the exceptional circumstance event has already occurred. The State Workforce Agency may file petitions on behalf of civil jurisdictions, as well as Metropolitan Statistical Areas of Primary Metropolitan Statistical Areas, as defined by the Office of Management and Budget. The addresses of State Workforce Agencies are available at the end of this description.

The Department of Labor issues the labor surplus area listing on a fiscal year basis. The listing becomes effective each October 1 and remains in effect through the following September 30. During the course of the fiscal year, the annual listing is updated on the basis of exceptional circumstances petitions submitted by State Workforce Agencies and approved by the Employment and Training Administration. The reference period used in preparing the current list was January 1999 through December 2000. The national average unemployment rate during this period (including data for Puerto Rico) fell below 5.0 percent. As a result, the 6.0 percent ''floor'' rate explained in paragraph number three, went into effect for the Fiscal Year 2002 labor surplus area classifications. Areas are therefore included on the current annual labor surplus area listing because their average unemployment rate during the reference period was 6.0 percent or above.

*Labor Surplus Area List*

The Fiscal Year 2002 labor surplus area list, which follows, contains 1,091 areas in 49 States, the District of Columbia, and Puerto Rico. The list only includes those states and jurisdictions with designated labor surplus areas. All of the qualifying areas in the Nation are listed in the alphabetical order by State or State equivalent. The Fiscal Year 2002 classifications will be in effect through September 30, 2002.

The FY 2002 list also includes Whiteside County, Illinois, an area that was certified under the exceptional circumstances criteria.

**State Workforce Agencies**

Alabama—Department of Industrial Relations, 649 Monroe St., Montgomery 36130

Alaska—Department of Labor & Workforce Development, P.O. Box 25509, Juneau, 99802

Arizona—Arizona Department of Economic Security, 1717 W. Jefferson, Phoenix 85005

Arkansas—Employment Security Department, Department of Labor, P.O. Box 2981, Little Rock 72203

California—Employment Development Department, 800 Capitol Mall, Sacramento 95814

Colorado—Department of Labor and Employment, 1515 Arapahoe Street, Denver 80202–2117
Connecticut—Connecticut Labor Dept., Employment Security Division, 200 Folly Brook Blvd., Wethersfield 06109
Delaware—Delaware Department of Labor, Division of Employment & Training, 820 French St., Wilmington 19809
District of Columbia—Department of Employment Services, 609 H Street, NE., Washington, DC 20002
Florida—Agency for Workforce Innovation, Commerce Industrial Ctr., Marpan Lane, Tallahassee 32311–0902
Georgia—Georgia Department of Labor, 148 International Blvd, NE, Atlanta 30303
Guam—Department of Labor, Government of Guam, P.O. Box 23548 GMF, Agana 96921
Hawaii—Department of Labor and Industrial Relations, 830 Punchbowl St., Honolulu 96813
Idaho—Department of Labor, 317 Main St., P.O. Box 35, Boise 83735
Illinois—Department of Employment Security, 401 South State St., Chicago 60605–1289
Indiana—Department of Employment and Training Services, 10 North Senate Ave., Indianapolis 46204
Iowa—Iowa Workforce Development, 1000 Grand Ave., Des Moines 50319
Kansas—Dept of Human Resources, Division of Employment, 401 Topeka Ave., Topeka 66603
Kentucky—Department of Employment Services, 275 East Main St., Frankfort 40621
Louisiana—Department of Labor, P.O. Box 94094, Baton Rouge 70804–9094
Maine—Department of Labor, Bureau of Employment Services, 20 Union St., P.O. Box 309, Augusta 04330
Maryland—Department of Economic and Employment Development, 1100 N. Eutaw St., Baltimore 21201
Massachusetts—Division of Employment and Training, 19 Stanford St., Charles F. Hurley Bldg., Boston, 02114
Michigan—Department of Career Development, Employment Service Agency, Victor Office Center, 201 N. Washington Square, 5th Floor, Lansing 48913
Minnesota—Department of Economic Security, 390 North Robert St., St. Paul 55101
Mississippi—Employment Security Commission, 1520 W. Capital St., P.O. Box 1699, Jackson 39205
Missouri—Dept. of Labor & Industrial Relations, Division of Employment Security, 421 E. Dunklin St., P.O. Box 59, Jefferson City 65101
Montana—Dept. of Labor & Industry, Employment Security Division of Montana, P.O. Box 1728, Helena 59624
Nebraska—Dept. of Labor, Div of Employment, 550 South 16th St., P.O. Box 94600, State House Station, Lincoln 68509
Nevada—Employment Security Department, 500 East 3rd St., Carson City 89713
New Hampshire—Department of Employment Security, 32 S. Main St., Room 204, Concord 03301
New Jersey—Department of Labor, John Fitch Plaza, Trenton 08625
New Mexico—Department of Labor, 401 Broadway, N.E., P.O. Box 1928, Albuquerque 87103
New York—Department of Labor, State Campus, Building 12, Albany 12240
North Carolina—Employment Security Commission of North Carolina, 700 Wade Ave., P.O. Box 25903, Raleigh 27611
North Dakota—Job Service North Dakota, 1000 E. Divide Ave., P.O. Box 5507, Bismarck, 58506–5507
Ohio—Bureau of Employment Services, 145 South Front St., P.O. Box 1618, Columbus 43216
Oklahoma—Employment Security Commission, 200 Will Rogers Memorial Office Bldg., Oklahoma City 73105
Oregon—Employment Department, Dept of Human Resources, 875 Union St., N.E., Salem 97311
Pennsylvania—Department of Labor & Industry, 1720 Labor & Industry Bldg. Harrisburg 17121
Puerto Rico—Department of Labor & Human Resources, 505 Munoz Rivera Ave., Hato Rey 00918
Rhode Island—Department of Labor & Training, 101 Friendship St., Providence 01903–3740
South Carolina—Employment Security Commission, P.O. Box 995, Columbia 29202
South Dakota—Department of Labor, 700 Governors Drive, Pierre 57501–2277
Tennessee—TN Department of Labor & Workforce Development, Division of Employment Security, 500 James Robertson Parkway 12th Floor, Davy Crockett Tower, Nashville 37245–1700
Utah—Department of Workforce Services, 140 East 300 South, PO Box 45249, Salt Lake City 84145–0249
Vermont—Department of Employment & Training, P.O. Box 488, 5 Green Mountain Drive, Montpelier 05601–0488
Virgin Islands—Department of Labor, 2203 Church Street Christiansted, St. Croix 00820
Virginia—Virginia Employment Commission, 703 East Main Street, Richmond 23219
Washington—Employment Security Department, P.O. Box 9046, Olympia 98507–9046
West Virginia—Bureau of Employment Programs, 112 California Ave., Charleston 25305–0112
Wisconsin—Department of Workforce Development, 201 East Washington Avenue, Room 400X, Madison 53707
Wyoming—Department of Employment, PO Box 2760, Casper 82602

## Labor Surplus Areas

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| **Alabama** | |
| Anniston City | Anniston City in Calhoun County. |
| Bibb County | Bibb County. |
| Bullock County | Bullock County. |
| Butler County | Butler County. |
| Choctaw County | Choctaw County. |
| Clarke County | Clarke County. |
| Clay County | Clay County. |
| Colbert County | Colbert County. |
| Conecuh County | Conecuh County. |
| Covington County | Covington County. |
| Crenshaw County | Crenshaw County. |
| Dallas County | Dallas County. |
| Fayette County | Fayette County. |
| Florence City | Florence City in Lauderdale County. |
| Franklin County | Franklin County. |
| Gadsden City | Gadsden City in Etowah County. |
| Geneva County | Geneva County. |
| Greene County | Greene County. |
| Hale County | Hale County. |
| Jackson County | Jackson County. |
| Lamar County | Lamar County. |
| Lowndes County | Lowndes County. |
| Macon County | Macom County. |
| Marion County | Marion County. |
| Monroe County | Monroe County. |
| Perry County | Perry County. |
| Pickens County | Pickens County. |
| Pike County | Pike County. |
| Prichard City | Prichard City in Mobile County. |
| Sumter County | Sumter County. |
| Walker County | Walker County. |
| Washington County | Washington County. |
| Wilcox County | Wilcox County. |
| Winston County | Winston County. |
| **Alaska** | |
| Aleutian Island West Census Area. | Aleutian Island West Census Area. |
| Bethel Census Area | Bethel Census Area. |
| Bristol Bay Borough Div. | Bristol Bay Borough Div. |
| Denali Borough | Denali Borough. |
| Dillingham Census Area. | Dillingham Census Area. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| Fairbanks City | Fairbanks City in Fairbanks North Star Borough. |
| Haines Borough | Haines Borough. |
| Kenai Pennsula Borough. | Kenai Pennsula Borough. |
| Ketchikan Gateway Borough. | Ketchikan Gateway Borough. |
| Kodiak Island Borough. | Kodiak Island Borough. |
| Lake and Penninsula Borough. | Lake and Penninsula Borough. |
| Matanuska-Susitina Borough. | Matanuka-Sustina Borough. |
| Nome Census Area | Nome Census Area. |
| North Slope Borough | North Slope Borough. |
| Northwest Arctic Borough. | Northwest Arctic Borough. |
| Prince of Wales Outer Ketchikan. | Prince of Wales Outer Ketchikan. |
| Skagway-Hoonah-Angoon Cen Area. | Skagway-Hoonah-Angoon Cen Area. |
| Southeast Fairbanks Census Area. | Southeast Fairbanks Census Area. |
| Valdez Cordova Census Area. | Valdez CorDova Census Area. |
| Wade Hampton Census Area. | Wade Hampton Census Area. |
| Wrangell-Petersburg Census Area. | Wrangell-Petersburg Census Area. |
| Yakutat Borough | Yakutat Borough. |
| Yukon-Koyukuk Census Area. | Yukon-Koyukuk Census Area. |
| **Arizona** | |
| Apache County | Apache County. |
| Balance of Coconino County. | Cocinino County less Flagstaff City. |
| Gila County | Gila County. |
| Graham County | Graham County. |
| Greenlee County | Greenlee County. |
| La Paz County | LaPaz County. |
| Navajo County | Navajo County. |
| Santa Cruz County | Santa Cruz County. |
| Yuma City | Yuma City in Yuma County. |
| Balance of Yuma County. | Yuma County less Luma City. |
| **Arkansas** | |
| Ashley County | Ashley County. |
| Bradley County | Bradley County. |
| Calhoun County | Calhoun County. |
| Chicot County | Chicot County. |
| Clay County | Clay County. |
| Conway County | Conway County. |
| Cross County | Cross County. |
| Dallas County | Dallas County. |
| Desha County | Desha County. |
| Drew County | Drew County. |
| Jackson County | Jackson County. |
| Lafayette County | Lafayette County. |
| Lawrence County | Lawrence County. |
| Lee County | Lee County. |
| Mississippi County | Mississippi County. |
| Monroe County | Monroe County. |
| Ouachita County | Ouachita County. |
| Perry County | Perry County. |
| Phillips County | Phillips County. |
| Pine Bluff City | Pine Bluff City in Jefferson County. |
| Randolph County | Randolph County. |
| Searcy County | Searcy County. |
| St. Francis County | St. Francis County. |
| Woodruff County | Woodruff County. |
| **California** | |
| Alpine County | Alpine County. |
| Azusa City | Azusa City in Los Angeles County. |
| Bakersfield City | Bakersfield City in Kern County. |
| Baldwin Park City | Baldwin Park City in Los Angeles County. |
| Banning City | Banning City in Riverside County. |
| Bell City | Bell City in Los Angeles County. |
| Bell Gardens City | Bell Gardens City in Los Angeles County. |
| Balance of Butte County. | Butte County less Chico City, Paradise City. |
| Calaveras County | Calaveras County. |
| Calexico City | Calexico City in Imperial County. |
| Ceres City | Ceres City in Stanislaus County. |
| Chico City | Chico City in Butte County. |
| Clovis City | Clovis City in Fresno County. |
| Colton City | Colton City in San Bernardino County. |
| Colusa County | Colusa County. |
| Compton City | Compton City in Los Angeles County. |
| Del Norte County | Del Norte County. |
| Delano City | Delano City in Kern County. |
| El Centro City | El Centro City in Imperial County. |
| El Monte City | El Monte City in Los Angeles County. |
| Eureka City | Eureka City in Humboldt County. |
| Fresno City | Fresno City in Fresno County. |
| Balance of Fresno County. | Fresno County less Clovis City, Fresno City. |
| Glenn County | Glenn County. |
| Hanford City | Hanford City in Kings County. |
| Hemet City | Hemet City in Riverside County. |
| Holister City | Holister City in San Benito County. |
| Balance of Humboldt County. | Humboldt County less Eureka City. |
| Huntington Park City | Huntington Park City in Los Angeles County. |
| Balance of Imperial County. | Imperial County less Calexico City, El Centro City. |
| Indio City | Indio City in Riverside County. |
| Inglewood City | Inglewood City in Los Angeles County. |
| Balance of Kern County. | Kern County less Bakersfield City, Delano City, Ridgecrest City. |
| Balance of Kings County. | Kings County less Hanford City. |
| La Puente City | La Puente City in Los Angeles County. |
| Lake County | Lake County. |
| Lake Elsinore City | Lake Elsinore City in Riverside County. |
| Lassen County | Lassen County. |
| Lodi City | Lodi City in San Joaquin County. |
| Los Angeles City | Los Angeles City in Los Angeles County. |
| Lynwood City | Lynwood City in Los Angeles County. |
| Madera City | Madera City in Madera County. |
| Balance of Madera County. | Madera County less Madera City. |
| Manteca City | Manteca City in San Joaquin County. |
| Marina City | Marina City in Monterey County. |
| Mariposa County | Mariposa County. |
| Maywood City | Maywood City in Los Angeles County. |
| Mendocino County | Mendocino County. |
| Merced City | Merced City in Merced County. |
| Balance of Merced County. | Merced County less Merced City. |
| Modesto City | Modesto City in Stanislaus County. |
| Modoc County | Modoc County. |
| Mono County | Mono County. |
| Balance of Monterey County. | Monterey County less Marina City, Monterey City, Salinas City, Seaside City. |
| Oxnard City | Oxnard City in Ventura County. |
| Paramount City | Paramount City in Los Angeles County. |
| Perris City | Perris City in Riverside County. |
| Pico Rivera City | Pico Rivera City in Los Angeles County. |
| Plumas County | Plumas County. |
| Pomona City | Pomona City in Los Angeles County. |
| Porterville City | Porterville City in Tulare County. |
| Redding City | Redding City in Shasta County. |
| Ridgecrest City | Ridgecrest City in Kern County. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| Rosemead City | Rosemead City in Los Angeles County. |
| Salinas City | Salinas City in Monterey County. |
| San Bernardino City | San Bernardino City in San Bernardino County. |
| San Jacinto City | San Jacinto City in Riverside County. |
| Balance of San Joaquin County. | San Joaquin County less Lodi City, Manteca City, Stockton City, Tracey City. |
| San Pablo City | San Pablo City in Contra Costa County. |
| Santa Paula City | Santa Paula City in Ventura County. |
| Seaside City | Seaside City in Monterey County. |
| Balance of Shasta County. | Shasta County less Redding City. |
| Sierra County | Sierra County. |
| Siskiyou County | Siskiyou County. |
| South Gate City | South Gate City in Los Angeles County. |
| Balance of Stanislaus County. | Stanislaus County less Ceres City, Modesto City, Turlock City. |
| Stockton City | Stockton City in San Joaquin County. |
| Balance of Sutter County. | Sutter County less Yuba City. |
| Tehama County | Tehama County. |
| Tracey City | Tracey City in San Joaquin County. |
| Trinity County | Trinity County. |
| Tulare City | Tulare City in Tulare County. |
| Balance of Tulare County. | Tulare County less Porterville City, Tulare City, Visalia City. |
| Tuolumne County | Tuolumne County. |
| Turlock City | Turlock City in Stanislaus County. |
| Victorville City | Victorville City in San Bernardino County. |
| Visalia City | Visalia City in Tulare County. |
| Watsonville City | Watsonville City in Santa Cruz County. |
| Yuba City | Yuba City in Sutter County. |
| Yuba County | Yuba County. |
| **Colorado** | |
| Conejos County | Conejos County. |
| Costilla County | Costilla County. |
| Dolores County | Dolores County. |
| Rio Grande County | Rio Grande County. |
| Saguache County | Saguache County. |
| San Juan County | San Juan County. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| **District of Columbia** | |
| Washington DC City | Washington, DC City in District of Columbia. |
| **Florida** | |
| Delray Beach City | Delray Beach City in Palm Beach County. |
| Fort Pierce City | Fort Pierce City in St. Lucie County. |
| Glades County | Glades County. |
| Gulf County | Gulf County. |
| Hamilton County | Hamilton County. |
| Hardee County | Hardee County. |
| Hendry County | Hendry County. |
| Highlands County | Highlands County. |
| Indian River County | Indian River County. |
| Miami Beach City | Miami Beach City in Miami-Dade County. |
| North Miami City | North Miami City in Miami-Dade County. |
| Okeechobee County | Okeechobee County. |
| Panama City | Panama City in Bay County. |
| Port St. Lucie City | Port St. Lucie City in Bay County. |
| Riviera Beach City | Riviera Beach City in Palm Beach County. |
| Balance of St. Lucie County. | St. Lucie County less Fort Pierce City, Fort St. Lucie City. |
| Taylor County | Taylor County. |
| West Palm Beach City. | West Palm Beach City in Palm Beach County. |
| **Georgia** | |
| Albany City | Albany City in Dougherty County. |
| Appling County | Appling County. |
| Atkinson County | Atkinson County. |
| Bacon County | Bacon County. |
| Baker County | Baker County. |
| Ben Hill County | Ben Hill County. |
| Berrien County | Berrien County. |
| Brantley County | Brantley County. |
| Burke County | Burke County. |
| Calhoun County | Calhoun County. |
| Chattahoochee County. | Chattahoochee County. |
| Clay County | Clay County. |
| Colquitt County | Colquitt County. |
| Crisp County | Crisp County. |
| Dooly County | Dooly County. |
| Early County | Early County. |
| Elbert County | Elbert County. |
| Emanuel County | Emanuel County. |
| Grady County | Grady County. |
| Greene County | Greene County. |
| Hancock County | Hancock County. |
| Heard County | Heard County. |
| Jeff Davis County | Jeff Davis County. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| Jefferson County | Jefferson County. |
| Johnson County | Johnson County. |
| La Grange City | La Grange City in Troup County. |
| Lamar County | Lamar County. |
| Laurens County | Laurens County. |
| Balance of Liberty County. | Liberty County less Hinesville City. |
| Lincoln County | Lincoln County. |
| Macon City | Macon City in Bibb County, Jones County. |
| Macon County | Macon County. |
| McDuffie County | McDuffie County. |
| Mitchell County | Mitchell County. |
| Montgomery County | Montgomery County. |
| Randolph County | Randolph County. |
| Richmond County | Richmond County. |
| Screven County | Screven County. |
| Stewart County | Stewart County. |
| Talbot County | Talbot County. |
| Tattnal County | Tattnal County. |
| Telfair County | Telfair County. |
| Terrell County | Terrell County. |
| Toombs County | Toombs County. |
| Treutlen County | Treutlen County. |
| Turner County | Turner County. |
| Twiggs County | Twiggs County. |
| Upson County | Upson County. |
| Valdosta City | Valdosta City in Lowndes County. |
| Warren County | Warren County. |
| Washington County | Washington County. |
| Wayne County | Wayne County. |
| Wheeler County | Wheeler County. |
| Wilkinson County | Wilkinson County. |
| Worth County | Worth County. |
| **Hawaii** | |
| Hawaii County | Hawaii County |
| Kauai County | Kauai County. |
| **Idaho** | |
| Adams County | Adams County. |
| Benewah County | Benewah County. |
| Boise County | Boise County. |
| Bonner County | Bonner County. |
| Boundary County | Boundary County. |
| Caribou County | Caribou County. |
| Cassia County | Cassia County. |
| Clearwater County | Clearwater County. |
| Custer County | Custer County. |
| Elmore County | Elmore County. |
| Fremont County | Fremont County. |
| Gem County | Gem County. |
| Idaho County | Idaho County. |
| Balance of Kootenai County. | Kootenai County less Coeur D Alene City. |
| Lemhi County | Lemhi County. |
| Lewis County | Lewis County. |
| Minidoka County | Minidoka County. |
| Balance of Nez Perce County. | Nez Perce County less Lewiston City. |
| Payette County | Payette County. |
| Power County | Power County. |
| Shoshone County | Shoshone County. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| Valley County | Valley County. |
| Washington County | Washington County. |
| **Illinois** | |
| Alexander County | Alexander County. |
| Alton City | Alton City in Madison County. |
| Belleville City | Belleville City in St. Clair County. |
| Carpentersville City | Carpentersville City in Kane County. |
| Carroll County | Carroll County. |
| Chicago Heights City | Chicago Heights City in Cook County. |
| Cicero City | Cicero City in Cook County. |
| Clay County | Clay County. |
| Crawford County | Crawford County. |
| Danville City | Danville City in Vermilion County. |
| De Witt County | De Witt County. |
| Dolton Village | Dolton Village in Cook County. |
| East St. Louis City | East St. Louis City in St. Clair County. |
| Fayette County | Fayette County. |
| Franklin County | Franklin County. |
| Freeport City | Freeport City in Stephenson County. |
| Fulton County | Fulton County. |
| Gallatin County | Gallatin County. |
| Granite City | Granite City in Madison County. |
| Grundy County | Grundy County. |
| Hamilton County | Hamilton County. |
| Hardin County | Hardin County. |
| Harvey City | Harvey City in Cook County. |
| Jasper County | Jasper County. |
| Johnson County | Johnson County. |
| Joliet City | Joliet City in Will County. |
| Kankakee City | Kankakee City in Kankakee County. |
| La Salle County | La Salle County. |
| Lawrence County | Lawrence County. |
| Marion County | Marion County. |
| Mason County | Mason County. |
| Maywood Village | Maywood Village in Cook County. |
| Mercer County | Mercer County. |
| Montgomery County | Montgomery County. |
| North Chicago City | North Chicago City in Lake County. |
| Perry County | Perry County. |
| Pope County | Pope County. |
| Pulaski County | Pulaski County. |
| Richland County | Richland County. |
| Rockford City | Rockford City in Winnebago County. |
| Saline County | Saline County. |
| Union County | Union County. |
| Wabash County | Wabash County. |
| Waukegan City | Waukegan City in Lake County. |
| Wayne County | Wayne County. |
| Whiteside County | Whiteside County. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| Williamson County | Williamson County. |
| **Indiana** | |
| East Chicago City | East Chicago City in Lake County |
| Gary City | Gary City in Lake County. |
| Greene County | Greene County. |
| Marion City | Marion City in Grant County. |
| Orange County | Orange County. |
| Perry County | Perry County. |
| Pulaski County | Pulaski County. |
| Switzerland County | Switzerland County. |
| **Kansas** | |
| Brown County | Brown County. |
| Geary County | Geary County. |
| Kansas City Kn | Kansas City Kn in Wyandotte County. |
| Linn County | Linn County. |
| **Kentucky** | |
| Adair County | Adair County. |
| Ballard County | Ballard County. |
| Bath County | Bath County. |
| Boyd County | Boyd County. |
| Breathitt County | Breathitt County. |
| Breckinridge County | Breckinridge County. |
| Carter County | Carter County. |
| Casey County | Casey County. |
| Clay County | Clay County. |
| Crittenden County | Crittenden County. |
| Cumberland County | Cumberland County. |
| Elliott County | Elliott County. |
| Floyd County | Floyd County. |
| Fulton County | Fulton County. |
| Green County | Green County. |
| Hancock County | Hancock County. |
| Harlan County | Harlan County. |
| Hopkins County | Hopkins County. |
| Johnson County | Johnson County. |
| Knott County | Knott County. |
| Lawrence County | Lawrence County. |
| Letcher County | Letcher County. |
| Lewis County | Lewis County. |
| Magoffin County | Magoffin County. |
| Martin County | Martin County. |
| McCreary County | McCreary County. |
| McLean County | McLean County. |
| Menifee County | Menifee County. |
| Monroe County | Monroe County. |
| Morgan County | Morgan County. |
| Muhlenberg County | Muhlenberg County. |
| Nicholas County | Nicholas County. |
| Ohio County | Ohio County. |
| Perry County | Perry County. |
| Pike County | Pike County. |
| Russell County | Russell County. |
| Taylor County | Taylor County. |
| Wayne County | Wayne County. |
| Webster County | Webster County. |
| Wolfe County | Wolfe County. |
| **Louisiana** | |
| Acadia Parish | Acadia Parish. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| Alexandria City | Alexandria City in Rapides Parish. |
| Allen Parish | Allen Parish. |
| Assumption Parish | Assumption Parish. |
| Avoyelles Parish | Avoyelles Parish. |
| Beauregard Parish | Beauregard Parish. |
| Bienville Parish | Bienville Parish. |
| Caldwell Parish | Caldwell Parish. |
| Catahoula Parish | Catahoula Parish. |
| Claiborne Parish | Claiborne Parish. |
| Concordia Parish | Concordia Parish. |
| De Sotto Parish | De Sotto Parish. |
| East Carroll Parish | East Carroll Parish. |
| Franklin Parish | Franklin Parish. |
| Grant Parish | Grant Parish. |
| Balance of Iberia | Iberia Parish less New Iberia City. |
| Iberville Parish | Iberville Parish. |
| Jefferson Davis Parish. | Jefferson Davis Parish. |
| La Salle Parish | La Salle Parish. |
| Lake Charles City | Lake Charles City in Calcasieu Parish. |
| Madison Parish | Madison Parish. |
| Morehouse Parish | Morehouse Parish. |
| New Iberia City | New Iberia City in Iberia Parish. |
| Pointe Coupee Parish | Point Coupee Parish. |
| Red River Parish | Red River Parish. |
| Richland Parish | Richland Parish. |
| St. James Parish | St. James Parish. |
| St. John Baptist Parish. | St. John Baptist Parish. |
| St. Landry Parish | St. Landry Parish. |
| St. Martin Parish | St. Martin Parish. |
| St. Mary Parish | St. Mary Parish. |
| Tangipahoa Parish | Tangipahoa Parish. |
| Tensas Parish | Tensas Parish. |
| Vermilion Parish | Vermilion Parish. |
| Washington Parish | Washington Parish. |
| Webster Parish | Webster Parish. |
| West Carroll Parish | West Carroll Parish. |
| Winn Parish | Winn Parish. |
| **Maine** | |
| Franklin County | Franklin County |
| Oxford County | Oxford County. |
| Piscataquis County | Piscataquis County. |
| Somerset County | Somerset County. |
| Washington County | Washington County. |
| **Maryland** | |
| Allegany County | Allegany County. |
| Baltimore City | Baltimore City. |
| Dorchester | Dorchester County. |
| Garrett County | Garrett County. |
| Somerset County | Somerset County. |
| Worcester County | Worcester County. |
| **Massachusetts** | |
| Gay Head Town | Gay Head Town in Dukes County. |
| Lawrence City | Lawrence City in Essen County. |
| New Bedford City | New Bedford City in Bristol County. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| Phillipston Town | Phillipston Town in Worcester County. |
| Provincetown Town | Provincetown Town in Barnstable County. |
| Truro Town | Truor Town in Barnstabale County. |
| **Michigan** | |
| Alcona County | Alcona County. |
| Alpena County | Alpena County. |
| Antrim County | Antrim County. |
| Arenac County | Arenac County. |
| Baraga County | Baraga County. |
| Bay City | Bay City in Bay County. |
| Burton City | Burton City in Genesee County. |
| Cheboygan County | Cheboygan County. |
| Chippewa County | Chippewa County. |
| Clare County | Clare County. |
| Crawford County | Crawford County. |
| Delta County | Delta County. |
| Detroit City | Detroit City in Wayne County. |
| Emmet County | Emmet County. |
| Flint City | Flint City in Genesee County. |
| Gladwin County | Gladwin County. |
| Gogebic County | Gogebic County. |
| Highland Park City | Highland Park City in Wayne County. |
| Iosco County | Iosco County. |
| Iron County | Iron County. |
| Kalkaska County | Kalkaska County. |
| Keweenaw County | Keweenaw County. |
| Lake County | Lake County. |
| Luce County | Luce County |
| Mackinac County | Mackinac County. |
| Manistee County | Manistee County. |
| Montmorency County | Montmorency County. |
| Mount Morris Township. | Mount Morris Township in Genesee County. |
| Muskegon City | Muskegon City in Muskegon County. |
| Newaygo County | Newaygo County. |
| Oceana County | Oceana County. |
| Ogemaw County | Ogemaw County. |
| Ontonagon County | Ontonagon County. |
| Oscoda County | Oscoda County. |
| Pontiac City | Pontiac City in Oakland County. |
| Presque Isle County | Presque Isle County. |
| Roscommon County | Roscommon County. |
| Saginaw City | Saginaw City in Saginaw County. |
| Sanilac County | Sanilac County. |
| Schoolcraft County | Schoolcraft County. |
| Wexford County | Wexford County. |
| **Minnesota** | |
| Aitkin County | Aitkin County. |
| Becker County | Becker County. |
| Cass County | Cass County. |
| Clearwater County | Clearwater County. |
| Grant County | Grant County. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| Itasca County | Itasca County. |
| Kanabec County | Kanabec County. |
| Kittson County | Kittson County. |
| Koochiching County | Koochiching County. |
| Mahnomen County | Mahnomen County. |
| Marshall County | Marshall County. |
| Mille Lacs County | Mille Lacs County. |
| Morrison County | Morrison County. |
| Pennington County | Pennington County. |
| Pine County | Pine County. |
| Red Lake County | Red Lake County. |
| **Mississippi** | |
| Adams County | Adams County. |
| Attala County | Attala County. |
| Benton County | Benton County. |
| Bolivar County | Bolivar County. |
| Carroll County | Carroll County. |
| Chickasaw County | Chickasaw County. |
| Choctaw County | Choctaw County. |
| Claiborne County | Claiborne County. |
| Clarke County | Clarke County. |
| Clay County | Clay County. |
| Coahoma County | Coahoma County. |
| Columbus City | Columbus City in Lowndes County. |
| Copiah County | Copiah County. |
| Franklin County | Franklin County. |
| George County | George County. |
| Greene County | Greene County. |
| Greenville City | Greenville City in Washington County. |
| Holmes County | Holmes County. |
| Humphreys County | Humphreys County. |
| Issaquena County | Issaquena County. |
| Jefferson County | Jefferson County. |
| Jefferson Davis County. | Jefferson Davis County. |
| Kemper County | Kemper County. |
| Lawrence County | Lawrence County. |
| Leake County | Leake County. |
| Leflore County | Leflore County. |
| Marion County | Marion County. |
| Marshall County | Marshall County. |
| Meridian City | Meridian City in Lauderdale County. |
| Monroe County | Monroe County. |
| Montgomery County | Montgomery County. |
| Newton County | Newton County. |
| Noxubee County | Noxubee County. |
| Panola County | Panola County. |
| Perry County | Perry County. |
| Quitman County | Quitman County. |
| Sharkey County | Sharkey County. |
| Stone County | Stone County. |
| Sunflower County | Sunflower County. |
| Tallahatchie County | Tallahatchie County. |
| Tishomingo County | Tishomingo County. |
| Tunica County | Tunica County. |
| Walthall County | Walthall County. |
| Balance of Washington County. | Washington County less Greenville City. |
| Wayne County | Wayne County. |
| Wilkinson County | Wilkinson County. |
| Winston County | Winston County. |
| Yalobusha County | Yalobusha County. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| Yazoo County | Yazoo County. |
| **Missouri** | |
| Benton County | Benton County. |
| Dent County | Dent County. |
| Hickory County | Hickory County. |
| Iron County | Iron County. |
| Linn County | Linn County. |
| Madison County | Madison County. |
| Pemiscot County | Pemiscot County. |
| Pulaski County | Pulaski County. |
| Reynolds County | Reynolds County. |
| Shelby County | Shelby County. |
| St. Louis City | St. Louis City. |
| St. Francois County | St. Francois County. |
| Stone County | Stone County. |
| Taney County | Taney County. |
| Texas County | Texas County. |
| Washington County | Washington County. |
| Wayne County | Wayne County. |
| **Montana** | |
| Anaconda-Deer Lodge County. | Anaconda-Deer Lodge County. |
| Big Horn County | Big Horn County. |
| Blaine County | Blaine County. |
| Flathead County | Flathead County. |
| Glacier County | Glacier County. |
| Granite County | Granite County. |
| Lake County | Lake County. |
| Lincoln County | Lincoln County. |
| Meagher County | Meagher County. |
| Mineral County | Mineral County. |
| Musselshell County | Musselshell County. |
| Phillips County | Phillips County. |
| Richland County | Richland County. |
| Roosevelt County | Roosevelt County. |
| Rosebud County | Rosebud County. |
| Sanders County | Sanders County. |
| **Nebraska** | |
| Johnson County | Johnson County. |
| Richardson County | Richardson County. |
| Thurston County | Thurston County. |
| **Nevada** | |
| Churchill County | Churchill County. |
| Esmeralda County | Esmeralda County. |
| Lander County | Lander County. |
| Lincoln County | Lincoln County. |
| Lyon County | Lyon County. |
| Mineral County | Mineral County. |
| North Las Vegas City | North Las Vegas City in Clark County. |
| **New Jersey** | |
| Atlantic City | Atlantic City in Atlantic County. |
| Camden City | Camden City in Camden County. |
| Cape May County | Cape May County. |
| Balance of Cumberland County. | Cumberland County less Millville City, Vineland City. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| East Orange City | East Orange City in Essex County. |
| Elizabeth City | Elizabeth City in Union County. |
| Jersey City | Jersey City in Hudson County. |
| Long Branch City | Long Branch City in Monmouth County. |
| Millville City | Millville City in Cumberland County. |
| New Brunswick City | New Brunswick City in Middlesex County. |
| Newark City | Newark City in Essex County. |
| Passaic City | Passaic City in Passaic County. |
| Paterson City | Paterson City in Passaic County. |
| Perth Amboy City | Perth Amboy City in Middlesex County. |
| Plainfield City | Plainfield City in Union County. |
| Trenton City | Trenton City in Mercer County. |
| Union City | Union City in Hudson County. |
| Vineland City | Vineland City in Cumberland County. |
| West New York Town | West New York Town in Hudson County. |
| **New Mexico** | |
| Carlsbad City | Carlsbad City in Eddy County. |
| Catron County | Catron County. |
| Balance of Chaves County. | Chaves County less Roswell City. |
| Cibola County | Cibola County. |
| Balance of Dona Ana County. | Dona Ana County less Las Cruces City. |
| Balance of Eddy County. | Eddy County less Carlsbad City. |
| Grant County | Grant County. |
| Guadalupe County | Guadalupe County. |
| Hidalgo County | Hidalgo County. |
| Hobbs City | Hobbs City in Lea County. |
| Las Cruces City | Las Cruces City in Dona Ana County. |
| Balance of Lea County. | Lea County less Hobbs City. |
| Luna County | Luna County. |
| McKinley County | McKinley County. |
| Mora County | Mora County. |
| Balance of Otero County. | Otero County less Alamogordo City. |
| Rio Arriba County | Rio Arriba County. |
| Roswell City | Roswell City in Chaves County. |
| Balance of San Juan County. | San Juan County less Farmington City. |
| San Miguel County | San Miguel County. |
| Taos County | Taos County. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| **New York** | |
| Allegany County | Allegany County. |
| Auburn City | Auburn City in Cayuga County. |
| Bronx County | Bronx County. |
| Buffalo City | Buffalo City in Erie County. |
| Cattaraugus County | Cattaraugus County. |
| Cortland County | Cortland County. |
| Elmira City | Elmira City in Chemung County. |
| Essex County | Essex County. |
| Franklin County | Franklin County. |
| Fulton County | Fulton County. |
| Hamilton County | Hamilton County. |
| Balance of Jefferson County. | Jefferson County less Watertown CIty. |
| Kings County | Kings County. |
| Lewis County | Lewis County. |
| Lockport City | Lockport City in Niagara County. |
| Montgomery County | Montgomery County. |
| Newburgh City | Newburgh City in Orange County. |
| Niagara Falls City | Niagara Falls City in Niagara County. |
| Oswego County | Oswego County. |
| Rochester City | Rochester City in Monroe County. |
| St. Lawrence County | St. Lawrence County. |
| Watertown City | Watertown City in Jefferson County. |
| Wyoming County | Wyoming County. |
| **North Carolina** | |
| Anson County | Anson County. |
| Ashe County | Ashe County. |
| Beaufort County | Beaufort County. |
| Bertie County | Bertie County. |
| Cherokee County | Cherokee County. |
| Columbus County | Columbus County. |
| Balance of Edgecombe County. | Edgecombe County less Rocky Mount City. |
| Graham County | Graham County. |
| Halifax County | Halifax County. |
| Hoke County | Hoke County. |
| Hyde County | Hyde County. |
| Kinston City | Kinston City in Lenoir County. |
| Martin County | Martin County. |
| Northampton County | Northampton County. |
| Richmond County | Richmond County. |
| Robeson County | Robeson County. |
| Rocky Mount City | Rocky Mount City in Edgecombe County, Nash County. |
| Rutherford County | Rutherford County. |
| Scotland County | Scoltland County. |
| Swain County | Swain County. |
| Tyrrell County | Tyrrell County. |
| Vance County | Vance County. |
| Warren County | Warren County. |
| Washington County | Washington County. |
| Wilson City | Wilson City in Wilson County. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| **North Dakota** | |
| Benson County | Benson County. |
| McLean County | McLean County. |
| Mercer County | Mercer County. |
| Mountrail County | Mountrail County. |
| Pembina County | Pembina County. |
| Rolette County | Rolette County. |
| Sheridan County | Sheridan County. |
| Sioux County | Sioux County. |
| **Ohio** | |
| Adams County | Adams County. |
| Canton City | Canton City in Stark County. |
| Cleveland City | Cleveland City in Cuyahoga County. |
| Dayton City | Dayton City in Montgomery County. |
| East Cleveland City | East Cleveland City in Cuyahoga County. |
| Gallia County | Gallia County. |
| Guernsey County | Guernsey County. |
| Harrison County | Harrison County. |
| Hocking County | Hocking County. |
| Huron County | Huron County. |
| Jackson County | Jackson County. |
| Jefferson County | Jefferson County. |
| Lawrence County | Lawrence County. |
| Lima City | Lima City in Allen County. |
| Lorain City | Lorain City in Lorain County. |
| Mansfield City | Mansfield City in Richland County. |
| Meigs County | Meigs County. |
| Mercer County | Mercer County. |
| Monroe County | Monroe County. |
| Morgan County | Morgan County. |
| Noble County | Noble County. |
| Ottawa County | Ottawa County. |
| Perry County | Perry County. |
| Pike County | Pike County. |
| Sandusky City | Sandusky City in Erie County. |
| Scioto County | Scioto County. |
| Vinton County | Vinton County. |
| Warren City | Warren City in Trumbull County. |
| Youngstown City | Youngstown City in Mahoning County. |
| Zanesville City | Zanesville City in Muskingum County. |
| **Oklahoma** | |
| Choctaw County | Choctaw County. |
| Haskell County | Haskell County. |
| Hughes County | Hughes County. |
| Balance of Kay County. | Kay County less Ponca City. |
| Latimer County | Latimer County. |
| McCurtain County | McCurtain County. |
| Okmulgee County | Okmulgee County. |
| Seminole County | Seminole County. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| **Oregon** | |
| Albany City | Albany City in Linn County. |
| Baker County | Baker County. |
| Coos County | Coos County. |
| Crook County | Crook County. |
| Curry County | Curry County. |
| Balance of Deschutes County. | Deschutes County less Bend City. |
| Douglas County | Douglas County. |
| Grant County | Grant County. |
| Harney County | Harney County. |
| Hood River County | Hood River County. |
| Balance of Jackson County. | Jackson County less Medford City. |
| Jefferson County | Jefferson County. |
| Josephine County | Josephine County. |
| Klamath County | Klamath County. |
| Lake County | Lake County. |
| Lincoln County | Lincoln County. |
| Lincoln County | Lincoln County. |
| Balance of Linn County. | Linn County less Albany City. |
| Malheur County | Malheur County. |
| Morrow County | Morrow County. |
| Umatilla County | Umatilla County. |
| Wallowa County | Wallowa County. |
| Wasco County | Wasco County. |
| Wheeler County | Wheeler County. |
| **Pennsylvania** | |
| Armstrong County | Armstrong County. |
| Bedford County | Bedford County. |
| Balance of Cambria County. | Cambria County less Johnstown City. |
| Cameron County | Cameron County. |
| Carbon County | Carbon County. |
| Chester City | Chester City in Delaware County. |
| Clearfield County | Clearfield County. |
| Elk County | Elk County. |
| Fayette County | Fayette County. |
| Forest County | Forest County. |
| Greene County | Greene County. |
| Hazleton City | Hazleton City in Luzerne County. |
| Huntingdon County | Huntingdon County. |
| Indiana County | Indiana County. |
| Jefferson County | Jefferson County. |
| Johnstown City | Johnstown City in Cambria County. |
| McKeesport City | McKeesport City in Allegheny County. |
| New Castle City | New Castle City in Lawrence County. |
| Philadelphia City | Philadelphia City in Philadelphia County. |
| Schuylkill County | Schuylkill County. |
| Williamsport City | Williamsport City in Lycoming County |
| **Puerto Rico** | |
| Adjuntas Municipio | Adjuntas Municipio. |
| Aguada Municipio | Aguada Municipio. |
| Aguadilla Municipio | Aguadilla Municipio |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| Agus Buenas Municipio. | Agus Buenas Municipio. |
| Aibonito Municipio | Aibonito Municipio. |
| Anasco Municipio | Anasco Municipio. |
| Arecibo Municipio | Arecibo Municipio. |
| Arroyo Municipio | Arroyo Municipio. |
| Barceloneta Municipio | Barceloneta Municipio. |
| Barranquitas Municipio. | Barranquitas Municipio. |
| Bayamon Municipio | Bayamon Municipio. |
| Cabo Rojo Municipio | Cabo Rojo Municipio. |
| Caguas Municipio | Caguas Municipio. |
| Camuy Municipio | Camuy Municipio. |
| Canovanas Municipio | Canovanas Municipio. |
| Carolina Municipio | Carolina Municipio. |
| Catano Municipio | Catano Municipio. |
| Cayey Municipio | Cayey Municipio. |
| Ceiba Municipio | Ceiba Municipio. |
| Ciales Municipio | Ciales Municipio. |
| Cidra Municipio | Cidra Municipio. |
| Coamo Municipio | Coamo Municipio. |
| Comerio Municipio | Comerio Municipio. |
| Corozal Municipio | Corozal Municipio. |
| Dorado Municipio | Dorado Municipio. |
| Fajardo Municipio | Fajardo Municipio. |
| Florida Municipio | Florida Municipio. |
| Guanica Municipio | Guanica Municipio. |
| Guayama Municipio | Guayama Municipio. |
| Guayanilla Municipio | Guayanilla Municipio. |
| Gurabo Municipio | Gurabo Municipio. |
| Hatillo Municipio | Hatillo Municipio. |
| Hormigueros Municipio. | Hormigueros Municipio. |
| Humacao Municipio | Humacao Municipio. |
| Isabela Municipio | Isabela Municipio. |
| Jayuya Municipio | Jayuya Municipio. |
| Juana Diaz Municipio | Juana Diaz Municipio. |
| Juncos Municipio | Juncos Municipio. |
| Lajas Municipio | Lajas Municipio. |
| Lares Municipio | Lares Municipio. |
| Las Marias Municipio | Las Marias Municipio. |
| Las Piedras Municipio | Las Piedras Municipio. |
| Loiza Municipio | Loiza Municipio. |
| Luquillo Municipio | Luquillo Municipio. |
| Manati Municipio | Manati Municipio. |
| Maricao Municipio | Maricao Municipio. |
| Maunabo Municipio | Maunabo Municipio. |
| Mayaguez Municipio | Mayaguez Municipio. |
| Moca Municipio | Moca Municipio. |
| Morovis Municipio | Morovis Municipio. |
| Naguabo Municipio | Naguabo Municipio. |
| Naranjito Municipio | Naranjito Municipio. |
| Orocovis Municipio | Orocovis Municipio. |
| Patillas Municipio | Patillas Municipio. |
| Penuelas Municipio | Penuelas Municipio. |
| Ponce Municipio | Ponce Municipio. |
| Quebradillas Municipio. | Quebradillas Municipio. |
| Rincon Municipio | Rincon Municipio. |
| Rio Grande Municipio | Rio Grande Municipio. |
| Sabana Grande Municipio. | Sabana Grande Municipio. |
| Salinas Municipio | Salinas Municipio. |
| San German Municipio. | San German Municipio. |
| San Juan Municipio | San Juan Municipio. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| San Lorenzo Municipio. | San Lorenzo Municipio . |
| San Sebastian Municipio. | San Sebastian Municipio. |
| Santa Isabel Municipio. | Santa Isabel Municipio. |
| Toa Alta Municipio | Toa Alta Municipio. |
| Toa Baja Municipio | Toa Baja Municipio. |
| Trujillo Alto Municipio | Trujillo Alto Municipio. |
| Utuado Municipio | Utuado Municipio. |
| Vega Alta Municipio | Vega Alta Municipio. |
| Vega Baja Municipio | Vega Baja Municipio. |
| Vieques Municipio | Vieques Municipio. |
| Villalba Municipio | Villalba Municipio. |
| Yabucoa Municipio | Yabucoa Municipio. |
| Yuco Municipio | Yuco Municipio. |
| **Rhode Island** | |
| New Shoreham Town | New Shoreham Town. |
| **South Carolina** | |
| Allendale County | Allendale County. |
| Bamberg County | Bamberg County. |
| Barnwell County | Barnwell County. |
| Calhoun County | Calhoun County. |
| Chester County | Chester County. |
| Chesterfield County | Chesterfield County. |
| Clarendon County | Clarendon County. |
| Darlington County | Darlington County. |
| Dillon County | Dillon County. |
| Fairfield County | Fairfield County. |
| Georgetown County | Georgetown County. |
| Greenwood County | Greenwood County. |
| Lee County | Lee County. |
| Marion County | Marion County. |
| Marlboro County | Marlboro County. |
| McCormick County | McCormick County. |
| Orangeburg County | Orangeburg County. |
| Union County | Union County. |
| Williamsburg County | Williamsburg County. |
| **South Dakota** | |
| Buffalo County | Buffalo County. |
| Corson County | Corson County. |
| Day County | Day County. |
| Dewey County | Dewey County. |
| Jackson County | Jackson County. |
| Mellette County | Mellette County. |
| Shannon County | Shannon County. |
| Todd County | Todd County. |
| Ziebach County | Zieback County. |
| **Tennessee** | |
| Benton County | Benton County. |
| Campbell County | Cambell County. |
| Carroll County | Carroll County. |
| Clay County | Clay County. |
| Cocke County | Cocke County. |
| Decatur County | Decatur County. |
| Fentress County | Fentress County. |
| Gibson County | Gibson County. |
| Hardeman County | Hardeman County. |
| Hardin County | Hardin County. |
| Haywood County | Haywood County. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| Henry County | Henry County. |
| Houston County | Houston County. |
| Humphreys County | Humphreys County. |
| Jackson County | Jackson County. |
| Johnson County | Johnson County. |
| Lauderdale County | Lauderdale County. |
| Lawrence County | Lawrence County. |
| Lewis County | Lewis County. |
| Meigs County | Meigs County. |
| Morgan County | Morgan County. |
| Perry County | Perry County. |
| Scott County | Scott County. |
| Sevier County | Sevier county. |
| Stewart County | Stewart County. |
| Unicoi County | Unicoi County. |
| Wayne County | Wayne County. |
| **Texas** | |
| Andrews County | Andrews County. |
| Beaumont City | Beaumont City in Jefferson County. |
| Balance of Brazoria County. | Brazoria County less Lake Jackson City, Pearland City. |
| Brooks County | Brooks County. |
| Brownsville City | Brownsville City in Cameron County. |
| Balance of Cameron County. | Cameron County less Brownsville City, Harlingen City. |
| Camp County | Camp County. |
| Cass County | Cass County. |
| Cochran County | Cochran County. |
| Corpus Christi City | Corpus Christi City in Nueces County. |
| Crane County | Crane County. |
| Crockett County | Crockett County. |
| Culverson County | Culberson County. |
| Del Rio City | Del Rio City in Valverde County. |
| Dimmit County | Dimmit County. |
| Duval County | Duval County. |
| Eagle Pass City | Eagle Pass City in Maverick County. |
| Balance of Ector County. | Ector County less Odessa City. |
| Edinburg City | Edinburg City in Hidalgo County. |
| El Paso City | El Paso City in El Paso County. |
| Balance of El Paso County. | El Paso County less El Paso City, Socorro City. |
| Floyd County | Floyd County. |
| Frio County | Frio County. |
| Galveston City | Galveston City in Galveston County. |
| Balance of Galveston County. | Galveston County less Friendswood City, Galveston City, League City, Texas City. |
| Gray County | Gray County. |
| Balance of Gregg County. | Gregg County less Longview City. |
| Grimes County | Grimes County. |
| Hardin County | Hardin County. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| Harlingen City | Harlingen City in Cameron County. |
| Balance of Harrison County. | Harrison County less Longview City. |
| Balance of Hidalgo County. | Hidalgo County less Edinburg City, McAllen City, Mission City, Pharr City, Weslaco City. |
| Hutchinson County | Huthinson County. |
| Jasper County | Jasper County. |
| Jim Hogg County | Jim Hogg County. |
| Jim Wells County | Jim Wells County. |
| Kingsville City | Kingsville City in Kleberg County. |
| Kinney County | Kinney County. |
| LaSalle County | LaSalle County. |
| Lamb County | Lamb County. |
| Laredo City | Laredo City in Webb County. |
| Liberty County | Liberty County. |
| Longview City | Longview City in Gregg County, Harrison County. |
| Loving County | Loving County. |
| Marion County | Marion County. |
| Matagorda County | Matagorda County. |
| Balance of Maverick County. | Maverick County less Eagle Pass City. |
| McAllen City | McAllen City in Hidlgo County. |
| Balance of Midland County. | Midland County less Midland City. |
| Mission City | Mission City in Hidalgo County. |
| Morris County | Morris County. |
| Newton County | Newton County. |
| Balance of Nueces County. | Nueces County less Corpus Christi City. |
| Odessa City | Odessa City in Ector County. |
| Orange County | Orange County. |
| Panola County | Panola County. |
| Paris City | Paris City in Lamar County. |
| Pecos County | Pecos County. |
| Pharr City | Pharr City in Hidalgo County. |
| Port Arthur City | Port Arthur City in Jefferson County. |
| Presidio County | Presidio County. |
| Reagan County | Reagan County. |
| Reeves County | Reeves County. |
| Sabine County | Sabine County. |
| San Patrico County | San Patricio County. |
| Scurry County | Scurry County. |
| Shelby County | Shelby County. |
| Socorro City | Socorro City in El Paso County. |
| Somervell County | Somervell County. |
| Starr County | Starr County. |
| Terry County | Terry County. |
| Texarkana City Tex | Texarkana City Tex in Bowie County. |
| Texas City | Texas City in Galveston County. |
| Tyler County | Tyler County. |
| Upton County | Upton County. |
| Uvalde County | Uvalde County. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| Balance of Val Verde County. | Val Verde County less Del Rio City. |
| Ward County | Ward County. |
| Balance of Webb County. | Webb County less Laredo City. |
| Weslaco City | Weslaco City in Hidalgo County. |
| Willacy County | Willacy County. |
| Winkler County | Winkler County. |
| Yoakum County | Yoakum County. |
| Zapata County | Zapata County. |
| Zavala County | Zavala County. |
| **Utah** | |
| Carbon County | Carbon County. |
| Duchesne County | Duchesne County. |
| Emery County | Emery County. |
| Garfield County | Garfield County. |
| Grand County | Grand County. |
| Ogden City | Ogden City in Weber County. |
| San Juan County | San Juan County. |
| **Vermont** | |
| Orleans County | Orleans County. |
| **Virginia** | |
| Buchanan County | Buchanan County. |
| Carroll County | Carroll County. |
| Covington City | Covington City. |
| Dickenson County | Dickenson County. |
| Grayson County | Grayson County. |
| Halifax County | Halifax County. |
| Henry County | Henry County. |
| Lancaster County | Lancaster County. |
| Lee County | Lee County. |
| Martinsville City | Martinsville City. |
| Northumberland County. | Northumberland County. |
| Norton City | Norton City. |
| Russell County | Russell County. |
| Surry County | Surry County. |
| Tazewell County | Tazewell County. |
| Wise County | Wise County. |
| **Washington** | |
| Adams County | Adams County. |
| Bremerton City | Bremerton City in Kitsap County. |
| Chelan County | Chelan County. |
| Clallam County | Clallam County. |
| Columbia County | Columbia County. |
| Balance of Cowlitz County. | Cowlitz County less Longview City. |
| Douglas County | Douglas County. |
| Everett City | Everett City in Snohomish County. |
| Ferry County | Ferry County. |
| Grant County | Grant County. |
| Grays Harbor County | Grays Harbor County. |
| Kennewick City | Kennewick City in Benton County. |
| Klickitat County | Klickitat County. |
| Lakewood City | Lakewood City in Pierce County. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| Lewis County | Lewis County. |
| Longview City | Longview City in Cowlitz County. |
| Mason County | Mason County. |
| Okanogan County | Okanogan County. |
| Pacific County | Pacific County. |
| Pasco City | Pasco City in Franklin County. |
| Pend Oreille County | Pend Oreille County. |
| Skagit County | Skagit County. |
| Skamania County | Skamania County. |
| Spokane City | Spokane City in Spokane County. |
| Stevens County | Stevens County. |
| Wahkiakum County | Wahkiakum County. |
| Walla Walla City | Walla Walla City in Walla Walla County. |
| Yakima City | Yakima City in Yakima County. |
| Balance of Yakima County. | Yakima County less Yakima City. |
| **West Virginia** | |
| BarBour County | BarBour County. |
| Boone County | Boone County. |
| Braxton County | Braxton County. |
| Calhoun County | Calhoun County. |
| Clay County | Clay County. |
| Fayette County | Fayette County. |
| Gilmer County | Gilmer County. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| Grant County | Grant County. |
| Greenbrier County | Greenbrier County. |
| Harrison County | Harrison County. |
| Huntington City | Huntington City in Cabell County. |
| Jackson County | Jackson County. |
| Lewis County | Lewis County. |
| Lincoln County | Lincoln County. |
| Logan County | Logan County. |
| Marion County | Marion County. |
| Balance of Marshall County. | Marshall County less Wheeling City. |
| Mason County | Mason County. |
| Mc Dowell County | Mc Dowell County. |
| Mineral County | Mineral County. |
| Mingo County | Mingo County. |
| Nicholas County | Nicholas County. |
| Parkersburg City | Parkersburg City in Wood County. |
| Pendleton County | Pendleton County. |
| Pleasants County | Pleasants County. |
| Pocahontas County | Pocahontas County. |
| Raleigh County | Raleigh County. |
| Randolph County | Randolph County. |
| Ritchie County | Ritchie County. |
| Roane County | Roane County. |
| Summers County | Summers County. |
| Taylor County | Taylor County. |
| Tucker County | Tucker County. |
| Tyler County | Tyler County. |
| Upshur County | Upshur County. |

LABOR SURPLUS AREAS—Continued

[October 1, 2001 through September 30, 2002]

| Eligible labor surplus | Civil jurisdictions included |
|---|---|
| Webster County | Webster County. |
| Wetzel County | Wetzel County. |
| Wirt County | Wirt County. |
| Wyoming County | Wyoming County. |
| **Wisconsin** | |
| Ashland County | Ashland County. |
| Bayfield County | Bayfield County. |
| Beloit City | Beloit City in Rock County. |
| Florence County | Florence County. |
| Iron County | Iron County. |
| Juneau County | Juneau County. |
| Menominee County | Menominee County. |
| Milwaukee City | Milwaukee City in Milwaukee County. |
| Price County | Price County. |
| Racine City | Racine City in Racine County. |
| **Wyoming** | |
| Big Horn County | Big Horn County. |
| Fremont County | Fremont County. |
| Balance of Natrona County. | Natrona County less Casper County. |
| Uinta County | Uinta County. |

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# Part IV

# Department of the Interior

## Office of Hearings and Appeals

43 CFR Part 4

**Trust Management Reform: Probate of Indian Trust Estates; Final Rule**

**DEPARTMENT OF THE INTERIOR**

**Office of Hearings and Appeals**

**43 CFR Part 4**

**RIN 1090–AA78**

# Trust Management Reform: Probate of Indian Trust Estates

**AGENCY:** Office of Hearings and Appeals, Office of the Secretary, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Interior, Office of Hearings and Appeals (OHA), is revising its regulations regarding hearings and appeals involving the probate of property and funds held in trust or restricted status for individual Indians and Alaska Natives. The revisions make OHA's probate regulations consistent with those published on January 22, 2001, by the Bureau of Indian Affairs (BIA) to accommodate BIA's re-assumption of responsibility for some probate cases. OHA's revisions will ensure that BIA and OHA apply the same standards and criteria for determining heirs and paying claims, and that they coordinate their procedures to expedite the probate process for Indian decedents' estates. This final rule reflects comments OHA received on the interim rule it published on June 18, 2001.

**DATES:** This rule is effective January 30, 2002.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Breece, Principal Deputy Director, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, telephone 703–235–3810.

**SUPPLEMENTARY INFORMATION:**

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II. Section-by-Section Analysis and Response to Comments
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B. Review Under Executive Order 12988 (Civil Justice Reform)
C. Review Under the Regulatory Flexibility Act
D. Review Under Small Business Regulatory Enforcement Fairness Act of 1996
E. Review Under the Paperwork Reduction Act
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I. Review Under Executive Order 12630 (Takings Implication Assessment)
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## I. Background

On June 18, 2001, the Office of Hearings and Appeals (OHA) published an interim rule amending several sections of its Indian probate regulations at 43 CFR part 4, subpart D. 66 FR 32884; see also 66 FR 33740 (June 25, 2001) (corrections). These regulatory changes, which were made immediately effective, were designed to make OHA's regulations consistent with the new 25 CFR part 15 that had been published by the Bureau of Indian Affairs (BIA) on January 22, 2001. 66 FR 7068 (effective March 23, 2001). Additional information concerning the background of the present rulemaking is found in the preamble to OHA's interim rule.

OHA requested comments on its interim rule, and several comments were received during the comment period that ended August 17, 2001. Commenters included the Office of Personnel Management (OPM), the Governmental Affairs Office of the American Bar Association (ABA), the Federal Administrative Law Judges Conference (FALJC), the FORUM of United States Administrative Law Judges (FORUM), and a number of individuals. On September 17, 2001, OHA officials met with Raymond Limon, Acting Deputy Assistant Director of OPM's Office of Administrative Law Judges, who requested the meeting to reiterate the concerns expressed in OPM's written comments. This final rule makes additional changes to 43 CFR part 4, subpart D in response to the comments OHA received. A discussion of the specific comments received and OHA's response thereto is included in the Section-by-Section Analysis below.

As explained in the interim rule, OHA is using the current rulemaking process (including the interim and final rules) to adopt those changes to its previous regulations that are necessary to avoid inconsistencies in the processing of Indian probate cases between BIA and OHA deciding officials. However, these changes are not intended to serve as the Department's final word on the Indian probate process. BIA and OHA are both contemplating further revisions to improve the probate process and make the regulations easier to understand, and the two organizations will work together on such changes over the coming months.

## II. Section-by-Section Analysis and Response to Comments

As explained above, the purpose of the changes to 43 CFR part 4, subpart D, is to make the policies and procedures that OHA uses to probate an Indian decedent's trust estate consistent with those adopted by BIA earlier this year, to ensure uniformity of treatment within the Department. The various provisions of subpart D address the purpose and scope of the Indian probate procedures; the mechanics of initiating the probate process; the disposition of claims against an estate; the ultimate distribution of the decedent's assets to the determined heirs or beneficiaries; and an appeals process to follow should disputes arise during any stage of the probate process. For reasons explained below, this final rule repromulgates all provisions of 43 CFR part 4, subpart D dealing with the Indian probate process, including the provisions revised in the interim rule.

The interim rule was effective upon publication, on June 18, 2001. One commenter requested clarification as to whether the effective date meant that the new provisions of the rule applied to all pending cases or only to new cases. The commenter noted that, to the extent any new provisions of the interim or final rule might alter the substantive rights of affected parties, applying those provisions to pending cases could raise concerns over retroactivity, which the law generally disfavors. See *Landgraf* v. *USI Film Products,* 511 U.S. 244 (1994); *Bowen* v. *Georgetown University Hospital,* 488 U.S. 408 (1988). To avoid such concerns, OHA will apply any new substantive provisions of either the interim or final rule only to cases arising after their respective effective dates, i.e., to cases in which the decedent died after the effective date of the rule.

*Section 4.200 Scope of Regulations*

By way of a technical amendment, this section is revised to clarify that the probate procedures in subpart D do not apply to the restricted property of deceased members of the Five Civilized Tribes and deceased Osage Indians. The probate procedures do apply, however, to any funds or property that may be held in trust for such decedents. This revision makes § 4.200 consistent with BIA's regulations at 25 CFR 15.3.

*Section 4.201 Definitions*

This section is revised from the interim rule to delete the definition of ''administrative law judge'' and to add a definition of ''OHA deciding official.'' Within OHA, Indian probate cases are handled either by administrative law judges, who are appointed under 5 U.S.C. 3105, or by Indian probate judges, who are senior attorney-advisers appointed pursuant to specific congressional authority to handle these cases. See Pub. L. 106–113, App. C, Sec.

124, 113 Stat. 1501A–160 (Nov. 29, 1999); Pub. L. 106–291, Sec. 117, 114 Stat. 943 (Oct. 11, 2000).

In the interim rule, OHA was revising only 12 out of 63 sections within subpart D dealing with the Indian probate process, since only those 12 sections had provisions that potentially conflicted with the new BIA regulations at 25 CFR part 15. However, all of the relevant sections within subpart D referred to the OHA deciding official for probate cases as ''the administrative law judge.'' Rather than revise all of subpart D in the interim rule to add references to Indian probate judges, OHA decided to revise its definition of ''administrative law judge,'' for purposes of subpart D only, to include both judges appointed under 5 U.S.C. 3105 and other OHA deciding officials designated by the Director. OHA explained in the preamble that it would consider revising all of subpart D in the future to use a longer phrase such as ''administrative law judge or other OHA deciding official'' wherever the term ''administrative law judge'' appeared in subpart D.

OPM, ABA, FALJC, and FORUM all submitted comments objecting to the revised definition of ''administrative law judge'' in the interim rule. As explained by these commenters, the term ''administrative law judge'' is a term of art used in the Administrative Procedure Act and other statutes and regulations, where its meaning is limited to judges appointed under 5 U.S.C. 3105. OHA's inclusion of Indian probate judges in the subpart D definition of ''administrative law judge,'' the commenters argued, could confuse the public as to the identity of the OHA deciding official handling any particular case, i.e., whether he or she had been selected through OPM's competitive process for hiring administrative law judges and was covered by the statutory and regulatory protections designed to ensure the independence of administrative law judges.

In response to these comments, OHA has decided to delete the expanded definition of ''administrative law judge'' in the interim rule and instead use the phrase ''OHA deciding official'' wherever the regulations previously used the phrase ''administrative law judge.'' Other options that were considered included ''administrative law judge or other OHA deciding official'' and ''administrative law judge or Indian probate judge,'' but OHA chose ''OHA deciding official'' as shorter and less awkward than those alternatives. ''OHA deciding official'' is also more consistent with the usage adopted by BIA in its probate rule. In this final rule, a definition of ''OHA deciding official'' has been added to include both administrative law judges and Indian probate judges.

In addition to revising § 4.201, this final rule repromulgates all provisions of 43 CFR part 4, subpart D dealing with the Indian probate process, to substitute the phrase ''OHA deciding official'' for the previous term ''administrative law judge.'' [1]

Section 4.201 has also been revised to clarify the treatment of restricted property in the definitions of ''probate'' and ''restricted property,'' consistent with the change to § 4.200 discussed above.

*Section 4.210 Commencement of Probate*

One commenter suggested that OHA add a reference to 25 CFR 15.104 in the second sentence of this section, along with the current reference to 25 CFR 15.202, to more fully describe the documents that must be included in the probate package referred to OHA. OHA agrees with the commenter and has added the suggested reference.

The commenter also suggested that OHA restore certain provisions from its previous version of 43 CFR 4.210, namely former paragraphs (b)(3) and (c), to cover documents that may be useful in the probate process but that are not specifically listed in 25 CFR 15.104 and 15.202. The commenter recommended that BIA should likewise add these provisions to its regulations. OHA believes the new version of 43 CFR 4.210 in this final rule is adequate to cover these documents, given the reference to ''any other relevant information''; but OHA will consult with BIA on whether the information covered by former 4.210(b)(3) and (c) should be added specifically to BIA's regulations in a subsequent rulemaking.

*Section 4.243 Appeals From BIA*

The interim rule added a new section 4.243 to set forth procedures to be followed when a probate matter is appealed from the decision of a BIA deciding official to an OHA deciding official. The last sentence of the section provided that the BIA deciding official ''must forward [to OHA] the entire file upon which the BIA deciding official's decision was based.'' One commenter suggested that the phrase ''the entire file'' be changed to ''all documents or other evidence'' upon which the BIA deciding official's decision was based, since ''the entire file'' may contain unnecessary documents such as cover memorandums, status notes, and driving directions. OHA has accepted the suggestion, but has used the slightly different phrase ''all documents and other evidence'' in place of ''the entire file.''

*Section 4.250 Filing and Proof of Creditor Claims; Limitations*

The interim rule revised paragraph (a) of this section to provide that all claims against the estate of a deceased Indian held by creditors chargeable with notice of the decedent's death must be filed within 60 days from the date BIA receives verification of the decedent's death, in accordance with 25 CFR 15.303(c). The previous rule had provided that claims had to be filed prior to the conclusion of the first hearing, typically within 20 days of the notice provided under § 4.211. Commenters raised two issues concerning this revision to § 4.250(a).

The first issue raised by the commenters is what happens if a creditor is not chargeable with notice of the decedent's death until near the end of or after the expiration of the 60-day period from the date BIA received verification of the death. The commenters pointed out that the only provision in the regulations for notice to creditors is § 4.211, which requires the posting of notice of the hearing at least 20 days in advance thereof and service on known parties in interest. By the time the hearing is set and notice is provided, the commenters observed, the 60-day period from the date BIA received verification of the death is likely to be long over.

OHA agrees that there is likely to be a significant hiatus between the end of the 60-day period in 25 CFR 15.303(c) and the posting and service of the hearing notice under § 4.211. However, many if not most creditors will have notice of the decedent's death when it occurs or shortly thereafter. Such creditors would typically include any relatives and friends of the decedent who may have claims against the estate; the tribe; anyone with claims for medical expenses of the last illness, nursing home or other care facility expenses, or funeral expenses; and other creditors in the decedent's community. Many of these creditors will have notice of the death even before BIA receives any verification of the death.

In addition, BIA has informed OHA that it intends to provide public notice,

[1] These provisions of subpart D have also been revised to be more inclusive in their use of personal pronouns. Thus ''he'' has become ''he or she''; ''him'' has become ''him or her''; and ''his'' has become ''his or her.'' Minor other editorial changes have also been made for improved clarity, such as changing some plural subjects and verbs to singular and changing the auxiliary verb ''shall'' to ''must,'' ''will,'' or ''may,'' depending on the context.

comparable to that required by § 4.211, when BIA has received verification of the death. Thus other creditors may also be chargeable with notice much sooner than the posting and service of the hearing notice. In many if not most instances, therefore, application of the 60-day provision of § 4.250(a) will not work any hardship on the creditors.

The commenters may still be right, however, that at least some creditors will not be chargeable with notice until near the end of or after the expiration of the 60-day period from the date BIA received verification of the death. Because the intent of the previous OHA rule was to give creditors at least 20 days from the date of actual or constructive notice of the death to submit their claims, this final rule further revises § 4.250(a) to provide that all claims must be filed with the agency (i) within 60 days from the date BIA receives a certified copy of the death certificate or other verification of the decedent's death under 25 CFR 15.101 or (ii) within 20 days from the date the creditor is chargeable with notice of the decedent's death, whichever of these dates is later.

Determination of the date on which a creditor was chargeable with notice will have to be made on a case-by-case basis by the OHA deciding official. BIA and OHA are considering adopting a regulation requiring BIA to publish a notice once BIA has verified the decedent's death, and requiring creditors to file all claims within 60 days from the date of publication. This approach would provide a uniform filing deadline for all creditors' claims and would simplify the determination required of the OHA deciding official. Because this proposal is beyond the scope of the interim rule, it will be considered in connection with a future rulemaking by BIA and OHA.

The second issue noted by the commenters is a potential conflict between the 60-day limitation in § 4.250(a) and the provisions of § 4.250(d), which provided that individual Indians could present claims against the estate by oral evidence at the hearing.

As explained previously in this preamble and more fully in the preamble to the interim rule, the intent of this rulemaking is to harmonize OHA's Indian probate rules with BIA's, which were the product of a lengthy process of analysis within the Department and consultation with tribes and tribal organizations. One of the policy decisions that resulted from that process was a decision to set certain limits on the filing and allowance of claims so as to preserve more of the trust estate for the benefit of the decedent's heirs or beneficiaries. In deference to this policy decision, this final rule deletes § 4.250(d). As a result, individual Indians chargeable with notice of the decedent's death must file any claims they may have against the estate within the applicable 60- or 20-day period provided in § 4.250(a), as revised.

Paragraph (c) of this section has also been revised so that the procedural requirements for filing claims are applicable to all claimants, since the alternative procedures previously available to individual Indian claimants under former paragraph (d) have been eliminated.

*Section 4.251 Priority of Claims*

One commenter observed that revised § 4.251 does not specifically mention the claims of federal agencies, such as those of the Farm Services Agency, the Social Security Administration, and the Internal Revenue Service. The commenter asked if such agencies would need to file their claims in tribal court before the claims could be allowed against the estate. Under § 4.251(b)–(c), federal agency claims that have been reduced to judgment by a court of competent jurisdiction would be entitled to priority, while federal agency claims that have not been reduced to judgment would be treated as general claims.

The commenter also asked what would happen to BIA-approved mortgages against trust property and any assignment of income the decedent had executed with the mortgage. These regulations do not affect the mortgage interest held by the lending agency, which would have a range of options available to it, including filing a claim against the trust estate for the unpaid loan balance, foreclosing on the mortgage, and/or making some arrangement for repayment with the decedent's heirs or beneficiaries. This final rule does not make any substantive changes to this section.

In addition to these comments, questions have been raised concerning § 4.251(e)–(f), specifically, at what point in time the OHA deciding official is to determine the amount of money in the decedent's individual Indian money (IIM) account. Section 4.252 provides that ''all trust moneys of the deceased on hand or accrued at the time of death * * * may be used for the payment of claims,'' which may indicate that the time of death should be used to determine the amount in the IIM account for purposes of § 4.251(e)–(f). On the other hand, § 4.251(g) provides that ''claims will not be enforceable against the estate after the estate is closed,'' which indicates that funds deposited in the IIM account after the date of death are available to pay claims, up until the time the estate is closed.

Section 4.252 is unchanged from the previous version of the OHA probate regulations, published in 1971. Under § 4.251(d) of those regulations, estates could be held open for up to 7 years to allow the payment of some claims. Thus it is clear that § 4.252 was never intended to limit the funds available for the payment of claims to those accrued at the time of the decedent's death. In the interim rule, OHA revised § 4.251 to be consistent with the new BIA rules at 25 CFR 15.305–15.309, and deleted the provision allowing estates to remain open for up to 7 years for the payment of claims. But consistent with 25 CFR 15.308, funds deposited in the IIM account during the probate process itself are available to pay claims.

Section 4.251(e)–(f) both refer to the order issued by the OHA deciding official governing the payment of claims. That order is based on the record made at the hearing, and it is that order that BIA and OTFM will follow in distributing the estate under § 4.273. It appears from these provisions, therefore, that the OHA deciding official should determine the amount of money available in the IIM account as of the date of the hearing, and base his or her determinations under § 4.251(e)–(f) on that amount. This final rule revises § 4.251(e) and (f) to clarify this point.

*Section 4.273 Distribution of Estates*

The interim rule renumbered and revised this section to provide that, unless the Superintendent has received a copy of a petition for rehearing filed pursuant to § 4.241(a) or a copy of a notice of appeal filed pursuant to § 4.320(b), he or she must initiate the payment of claims, distribution of the estate, and other actions required by the final order of the OHA deciding official. One commenter suggested adding a reference to the 60-day period allowed for filing a petition for rehearing or a notice of appeal. That suggestion has been adopted in this final rule, although the time period has been set at 75 days to reflect the additional 15-day grace period provided in 25 CFR 15.312.

*Section 4.301 Valuation Report*

By way of a technical amendment, § 4.301 is revised to change the term ''appraisal'' to ''valuation.'' Depending upon the circumstances, BIA uses various approaches or methodologies to determine the appropriate value of property. A formal appraisal is one of these approaches, but is not required in

every case. Therefore, the more general term ''valuation'' is substituted for ''appraisal'' in § 4.301. The same change has been made to §§ 4.236, 4.302, 4.305, and 4.306.

## III. Procedural Requirements

### *A. Review Under Executive Order 12866 (Regulatory Planning and Review)*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Department must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule describes how the federal government will administer its trust responsibility in probating the trust and restricted property interests of individual Indians. Thus, the impact of the rule is confined to the federal government and Indian trust beneficiaries and does not impose a compliance burden on the economy generally. Accordingly, it has been determined that this rule is not a ''significant regulatory action'' from an economic standpoint and that it does not otherwise create any inconsistencies or budgetary impacts on any other agency or federal program.

### *B. Review Under Executive Order 12988 (Civil Justice Reform)*

With respect to both the review of existing regulations and the promulgation of new regulations, subsection 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction.

With regard to the review of new regulations, subsection 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulations (1) clearly specify the preemptive effect, if any; (2) clearly specify any effect on existing Federal law or regulation; (3) provide a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specify the retroactive effect, if any; (5) adequately define key terms; and (6) address other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

Subsection 3(c) of Executive Order 12988 requires agencies to review new regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department has determined that this rule meets the relevant standards of Executive Order 12988.

### *C. Review Under the Regulatory Flexibility Act*

This rule was also reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities.

This rule streamlines the Department's policies and procedures that apply to certain Indian trust resources. Indian tribes are not small entities under the Regulatory Flexibility Act. Any impacts on identified small entities affected by this rulemaking are minimal, as they would concern a small number of farmers, ranchers, and individuals doing business on Indian lands (e.g., convenience stores, gasoline stations, sundry shops). Accordingly, the Department has determined that this rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

### *D. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more. The revised subpart represents programs that are ongoing within the Department, and no new monies are being introduced into the stream of commerce. This rule will not result in a major increase in costs or prices. The effect of this rulemaking will be to streamline ongoing policies, procedures, and management operations of the Department in probating individual Indian trust and/or restricted property. No increase in costs for administration will be realized, and no prices would be affected through these minor revisions to existing practice.

This rule will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation, nor on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. The impact of the rule will be realized primarily by individual Indians having a protected trust resource. These administrative revisions to departmental policy and procedure will not otherwise have a significant impact any small businesses or enterprises.

### *E. Review Under the Paperwork Reduction Act*

This rule is exempt from the requirements of the Paperwork Reduction Act, since it applies to the conduct of agency administrative proceedings involving specific individuals and entities. 44 U.S.C. 3518(c); 5 CFR 1320.4(a)(2). An OMB form 83–1 is not required.

### *F. Review Under Executive Order 13132 (Federalism)*

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. While this rule may be of interest to tribes, there is no Federalism impact on the trust relationship or balance of power between the United States government and the various tribal governments affected by this rulemaking. Therefore, in accordance with Executive Order 13132, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### *G. Review Under the National Environmental Policy Act of 1969*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental

Impact Statement is necessary for this rule.

*H. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the Act, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

*I. Review Under Executive Order 12630 (Takings)*

In accordance with Executive Order 12630, this rule does not have significant takings implications. This rule does not involve the ''taking'' of private property interests.

*J. Review Under Executive Order 13175 (Tribal Consultation)*

The Department determined that, because revisions to 43 CFR part 4, subpart D could have tribal implications, it would consult with tribal governments on this rulemaking. These consultations were in keeping with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' In promulgating its own probate regulations, BIA had consulted extensively with tribal governments. Because OHA was effectively incorporating certain BIA regulations into its regulations, tribal governments were aware of the substance of the OHA regulations even prior to publication of the interim rule. However, the Department undertook an additional consultation process by providing a draft of the interim rule to all the tribes and to the National Congress of American Indians and by soliciting their comments. No comments were received from any tribe or tribal organization during this pre-proposal comment period.

In addition, tribal governments were notified of the substance of this rulemaking through the publication of the interim rule in the **Federal Register** and through a direct mailing to tribal leaders. These steps enabled tribal officials and the affected tribal constituency throughout Indian Country to have meaningful and timely input in the development of the final rule.

*K. Review Under Executive Order 13211 (Energy Impacts)*

The Department has determined that this rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 18, 2001), because it is not a significant regulatory action under Executive Order 12866 (as discussed above), nor is it likely to have a significant adverse effect on the supply, distribution, or use of energy.

**List of Subjects in 43 CFR Part 4, Subpart D**

Administrative practice and procedure, Estates, Hearing and appeal procedures, Indians, Probate.

Dated: December 17, 2001.

**P. Lynn Scarlett,**

*Assistant Secretary—Policy, Management and Budget.*

For the reasons stated in the preamble, the Department of the Interior, Office of Hearings and Appeals, amends 43 CFR part 4, subpart D as follows:

1. The authority citation for part 4, subpart D continues to read as follows:

**Authority:** Secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 586, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022; R.S. 463, 465; 5 U.S.C. 301; 25 U.S.C. secs. 2, 9, 372, 373, 374, 373a, 373b, 410; 100 Stat. 61, as amended by 101 Stat. 886 and 101 Stat. 1433, 25 U.S.C. 331 note.

2. Revise §§ 4.200 through 4.323 to read as follows:

**Scope of Regulations; Definitions; General Authority of OHA Deciding Officials**

**§ 4.200 Scope of regulations.**

Included in §§ 4.200 through 4.202 are general rules applicable to all proceedings in subpart D of this part. Included in §§ 4.203 through 4.282 and §§ 4.310 through 4.323 are procedural rules applicable to the settlement of trust estates of deceased Indians who die possessed of trust property; however, these rules do not apply to the restricted property of deceased Indians of the Five Civilized Tribes, deceased Osage Indians, and members of any tribe organized under 25 U.S.C. 476, to the extent that the constitution, by-laws or charter of each tribe may be inconsistent with this subpart. Included within §§ 4.300 through 4.308 are supplemental procedural rules applicable to determinations as to tribal purchase of certain property interests of decedents under special laws applicable to particular tribes. Included within §§ 4.330 through 4.340 are procedural rules applicable to appeals to the Board of Indian Appeals from administrative actions or decisions issued by the Bureau of Indian Affairs as set forth in § 4.330. Except as limited by the provisions herein, the rules in subparts A and B of this part apply to these proceedings.

**§ 4.201 Definitions.**

As used in this subpart:

*Agency* means the agency office or any other designated office in BIA having jurisdiction over trust or restricted property and money. This term also means any office of a tribe which has contracted or compacted the BIA probate function under 25 U.S.C. 450f or 458cc.

*Attorney decision maker* means an attorney with BIA who reviews a probate package, determines heirs, approves wills and beneficiaries of the will, determines creditors' claims, and issues a written decision to the extent authorized by 25 CFR part 15.

*Beneficiary* means any individual who receives trust or restricted property or money in a decedent's will.

*BIA* means the Bureau of Indian Affairs within the Department of the Interior.

*BIA deciding official* means the official with the delegated authority to make a decision on a probate matter pursuant to 25 CFR part 15, and may include a BIA regional director, agency superintendent, field representative, or attorney decision maker.

*Board* means the Board of Indian Appeals in the Office of Hearings and Appeals, Office of the Secretary, authorized by the Secretary to hear, consider, and determine finally for the Department appeals taken by aggrieved parties from actions by OHA deciding officials on petitions for rehearing or reopening, and allowance of attorney fees, and from actions of BIA officials as provided in § 4.1(b)(2).

*Child* or *children* includes an adopted child or children.

*Commissioner* includes the Deputy Commissioner of Indian Affairs and his or her authorized representatives.

*Day* means a calendar day, unless otherwise stated.

*Decedent* means a person who is deceased.

*Department* means the Department of the Interior.

*Estate* means the trust cash assets and restricted or trust property owned by the decedent at the time of his or her death.

*Heir* means any individual who receives trust or restricted property or money from a decedent in an intestate proceeding.

*IIM account* means funds held in an individual Indian monies account by OTFM or a tribe performing this function under a contract or compact.

*Intestate* means the decedent died without a will.

*Minor* means an individual who has not reached the age of majority as defined by the applicable tribal or state law.

*OHA deciding official* means an employee of the Office of Hearings and Appeals with the authority to make a decision on a probate matter pursuant to this subpart. The OHA deciding official may be either an administrative law judge appointed pursuant to the Administrative Procedure Act, 5 U.S.C. 3105, or an Indian probate judge.

*OTFM* means the Office of Trust Funds Management within the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

*Party in interest* means any presumptive or actual heir, any beneficiary under a will, any party asserting a claim against a deceased Indian's estate, and any Tribe having a statutory option to purchase interests of a decedent.

*Probate* means the legal process by which applicable tribal law, state law, or federal law that affects the distribution of the decedent's estate is applied to:

(1) Determine the heirs,

(2) Approve wills and determine beneficiaries, and

(3) Transfer any funds or property held in trust by the Secretary for a decedent, or any restricted property of the decedent, to the heirs, beneficiaries, or other persons or entities.

*Probate specialist* means a BIA or tribal employee who is trained in Indian probate matters.

*Restricted property* means real or personal property held by an Indian which he or she cannot alienate or encumber without the consent of the Secretary or his or her authorized representative. In this subpart, restricted property is treated as if it were trust property. Except with respect to § 4.200, the term ''restricted property'' as used in this subpart does not include the restricted lands of the Five Civilized Tribes or Osage Tribe of Indians.

*Secretary* means the Secretary of the Interior or his or her authorized representative.

*Solicitor* means the Solicitor of the Department of the Interior or his or her authorized representative.

*Superintendent* means the BIA Superintendent or other BIA officer having jurisdiction over an estate, including area field representatives or one holding equivalent authority.

*Testate* means the decedent executed a will before his or her death.

*Trust property* means real or personal property, or an interest therein, which the United States holds in trust for the benefit of an individual Indian.

*Will* or *last will and testament* means a written testamentary document, including any properly executed written changes, called codicils, which was signed by the decedent and was attested by two disinterested adult witnesses, that states who will receive the decedent's trust or restricted property.

### § 4.202 General authority of OHA deciding officials.

An OHA deciding official will, except as otherwise provided in § 4.205(b) and 25 CFR 15.203 and 15.206, determine the heirs of any Indian who dies intestate possessed of trust property; approve or disapprove the will of a deceased Indian disposing of trust property; accept or reject any full or partial renunciation of interest in both testate and intestate proceedings; allow or disallow creditors' claims against the estate of a deceased Indian; and decree the distribution of trust property to heirs and devisees, including the partial distribution to known heirs or devisees where one or more potential heirs or devisees are missing but not presumed dead, after attributing to and setting aside for such missing person or persons the share or shares such person or persons would be entitled to if living. An OHA deciding official will determine the right of a tribe to take any inherited interest and the fair market value of the interest taken in appropriate cases as provided by statute. He or she will review each case de novo, hold hearings as necessary or appropriate, and issue decisions in matters appealed from decisions of BIA deciding officials. Administrative law judges will also hold hearings and issue recommended decisions in matters referred to them by the Board in the Board's consideration of appeals from administrative actions of BIA officials.

## Determination of Heirs; Approval of Wills; Settlement of Indian Trust Estates

### § 4.203 Determination as to nonexistent persons and other irregularities of allotments.

(a) An OHA deciding official will hear and determine whether trust patents covering allotments of land were issued to nonexistent persons, and whether more than one trust patent covering allotments of land had been issued to the same person under different names and numbers or through other errors in identification.

(b) If an OHA deciding official determines under paragraph (a) of this section that a trust patent issued to an existing person and/or that separate persons received the allotments under consideration and any one of them is deceased, without having had his or her estate probated, the OHA deciding official must proceed as provided in § 4.202.

(c) If an OHA deciding official determines under paragraph (a) of this section that a person did not exist or that more than one allotment was issued to the same person, the OHA deciding official must issue a decision to that effect, giving notice thereof to parties in interest as provided in § 4.240(b).

### § 4.204 Presumption of death.

(a) An OHA deciding official will receive evidence on and determine the issue of whether any person, by reason of unexplained absence, is to be presumed dead.

(b) If an OHA deciding official determines that an Indian person possessed of trust property is to be presumed dead, the OHA deciding official must proceed as provided in § 4.202.

### § 4.205 Escheat.

An OHA deciding official will determine whether any Indian holder of trust property died intestate without heirs and—

(a) With respect to trust property other than on the public domain, order the escheat of such property in accordance with 25 U.S.C. 373a.

(b) With respect to trust property on the public domain, submit to the Board of Indian Appeals the records thereon, together with recommendations as to the disposition of said property under 25 U.S.C. 373b.

### § 4.206 Determinations of nationality or citizenship and status affecting character of land titles.

In cases where the right and duty of the Government to hold property in trust depends thereon, an OHA deciding official will determine the nationality or citizenship, or the Indian or non-Indian status, of heirs or devisees, or whether Indian heirs or devisees of U.S. citizenship are of a class as to whose property the Government's supervision and trusteeship have been terminated in current probate proceedings or in completed estates after reopening such estates under, but without regard to the 3-year limit set forth in § 4.242.

**§ 4.207 Compromise settlement.**

(a) If during the course of the probate of an estate it develops that an issue between contending parties is of such nature as to be substantial, and it further appears that such issue may be settled by agreement preferably in writing by the parties in interest to their advantage and to the advantage of the United States, such an agreement may be approved by the OHA deciding official upon findings that:

(1) All parties to the compromise are fully advised as to all material facts;

(2) All parties to the compromise are fully cognizant of the effect of the compromise upon their rights; and

(3) It is in the best interest of the parties to settle rather than to continue litigation.

(b) In considering the proposed settlement, the OHA deciding official may take and receive evidence as to the respective values of specific items of property. Superintendents and irrigation project engineers must supply all necessary information concerning any liability or lien for payment of irrigation construction and of irrigation operation and maintenance charges.

(c) Upon an affirmative determination as to all three points specified, the OHA deciding official will issue such final order of distribution in the settlement of the estate as is necessary to approve the same and to accomplish the purpose and spirit of the settlement. Such order will be construed as any other order of distribution establishing title in heirs and devisees and will not be construed as a partition or sale transaction within the provisions of 25 CFR part 152. If land titles are to be transferred, the necessary deeds must be prepared and executed at the earliest possible date. Upon failure or refusal of any party in interest to execute and deliver any deed necessary to accomplish the settlement, the OHA deciding official will settle the issues and enter an order as if no agreement had been attempted.

(d) OHA deciding officials are authorized to approve all deeds or conveyances necessary to accomplish a settlement under this section.

**§ 4.208 Renunciation of interest.**

Any person 21 years or older, whether of Indian descent or not, may renounce intestate succession or devise of trust or restricted property, wholly or partially (including the retention of a life estate), by filing a signed and acknowledged declaration of such renunciation with the OHA deciding official prior to entry of the final order by the OHA deciding official. No interest in the property so renounced is considered to have vested in the heir or devisee and the renunciation is not considered a transfer by gift of the property renounced, but the property so renounced passes as if the person renouncing the interest has predeceased the decedent. A renunciation filed in accordance herewith will be considered accepted when implemented in an order by an OHA deciding official and will be irrevocable thereafter. All disclaimers or renunciations heretofore filed with and implemented in an order by an OHA deciding official are hereby ratified as valid and effective.

## Commencement of Probate Proceedings

**§ 4.210 Commencement of probate.**

The probate of a trust estate before an OHA deciding official will commence when the probate specialist or BIA deciding official files with the OHA deciding official all information shown in the records relative to the family of the deceased and his or her property. The information must include the complete probate package described in 25 CFR 15.104 and 15.202 and any other relevant information. The agency or BIA deciding official must promptly transmit to the OHA deciding official any creditor's or other claims that are received after the case is transmitted to the OHA deciding official, for a determination of their timeliness, validity, priority, and allowance under §§ 4.250 and 4.251.

**§ 4.211 Notice.**

(a) An OHA deciding official may receive and hear evidence at a hearing to determine the heirs of a deceased Indian or probate his or her will only after the OHA deciding official has caused notice of the time and place of the hearing to be posted at least 20 days prior to the hearing date in five or more conspicuous places in the vicinity of the designated place of hearing, and the OHA deciding official may cause postings in such other places and reservations as he or she deems appropriate. A certificate showing the date and place of posting must be signed by the person or official who performs the act.

(b) The OHA deciding official must serve or cause to be served a copy of the notice on each party in interest known to the OHA deciding official and on each attesting witness if a will is offered:

(1) By personal service in sufficient time in advance of the date of the hearing to enable the person served to attend the hearing; or

(2) By mail, addressed to the person at his or her last known address, in sufficient time in advance of the date of the hearing to enable the addressee served to attend the hearing. The OHA deciding official must cause a certificate, as to the date and manner of such mailing, to be made on the record copy of the notice.

(c) All parties in interest, known and unknown, including creditors, will be bound by the decision based on such hearing if they lived within the vicinity of any place of posting during the posting period, whether they had actual notice of the hearing or not. As to those not within the vicinity of the place of posting, a rebuttable presumption of actual notice will arise upon the mailing of such notice at a reasonable time prior to the hearing, unless the said notice is returned by the postal service to the office of the OHA deciding official unclaimed by the addressee.

(d) Tribes to be charged with notice of death and probate. When a record reveals that a Tribe has a statutory option to purchase interests of a decedent, such Tribe must be notified of the pendency of a proceeding by the the OHA deciding official having probate jurisdiction in such proceeding, and the certificate of mailing of notice of probate hearing or of a final decision in probate to the Tribe at its record address will be conclusive evidence for all purposes that the Tribe had notice of decedent's death and notice of the pendency of the probate proceedings.

**§ 4.212 Contents of notice.**

(a) In the notice of hearing, the OHA deciding official must specify that at the stated time and place the OHA deciding official will take testimony to determine the heirs of the deceased person (naming him or her) and, if a will is offered for probate, testimony as to the validity of the will describing it by date. The notice must name all known presumptive heirs of the decedent, and, if a will is offered for probate, the beneficiaries under such will and the attesting witnesses to the will. The notice must cite this subpart as the authority and jurisdiction for holding the hearing, and must inform all persons having an interest in the estate of the decedent, including persons having claims or accounts against the estate, to be present at the hearing or their rights may be lost by default.

(b) The notice must state further that the hearing may be continued to another time and place. A continuance may be announced either at the original hearing by the OHA deciding official or by an appropriate notice posted at the announced place of hearing on or prior to the announced hearing date and hour.

**Depositions, Discovery, and Prehearing Conference**

**§ 4.220 Production of documents for inspection and copying.**

(a) At any stage of the proceeding prior to the conclusion of the hearing, a party in interest may make a written demand, a copy to be filed with the OHA deciding official, upon any other party to the proceeding or upon a custodian of records on Indians or their trust property, to produce for inspection and copying or photographing, any documents, papers, records, letters, photographs, or other tangible things not privileged, relevant to the issues which are in the other party's or custodian's possession, custody, or control. Upon failure of prompt compliance, the OHA deciding official may issue an appropriate order upon a petition filed by the requesting party. At any time prior to closing the record, the OHA deciding official upon his or her own motion, after notice to all parties, may issue an order to any party in interest or custodian of records for the production of material or information not privileged, and relevant to the issues.

(b) Custodians of official records will furnish and reproduce documents, or permit their reproduction, in accordance with the rules governing the custody and control thereof.

**§ 4.221 Depositions.**

(a) *Stipulation.* Depositions may be taken upon stipulation of the parties. Failing an agreement therefor, depositions may be ordered under paragraphs (b) and (c) of this section.

(b) *Application for taking deposition.* When a party in interest files a written application, the OHA deciding official may at any time thereafter order the taking of the sworn testimony of any person by deposition upon oral examination for the purpose of discovery or for use as evidence at a hearing. The application must be in writing and must set forth:

(1) The name and address of the proposed deponent;

(2) The name and address of that person, qualified under paragraph (d) of this section to take depositions, before whom the proposed examination is to be made;

(3) The proposed time and place of the examination, which must be at least 20 days after the date of the filing of the application; and

(4) The reasons why such deposition should be taken.

(c) *Order for taking deposition.* If after examination of the application the OHA deciding official determines that the deposition should be taken, he or she will order its taking. The order must be served upon all parties in interest and must state:

(1) The name of the deponent;

(2) The time and place of the examination which must not be less than 15 days after the date of the order except as stipulated otherwise; and

(3) The name and address of the officer before whom the examination is to be made. The officer and the time and place need not be the same as those requested in the application.

(d) *Qualifications of officer.* The deponent must appear before the OHA deciding official or before an officer authorized to administer oaths by the law of the United States or by the law of the place of the examination.

(e) *Procedure on examination.* The deponent must be examined under oath or affirmation and must be subject to cross-examination. The testimony of the deponent must be recorded by the officer or someone in the officer's presence. An applicant who requests the taking of a person's deposition must make his or her own arrangements for payment of any costs incurred.

(f) *Submission to witness; changes; signing.* When the testimony is fully transcribed, the deposition must be submitted to the deponent for examination and must be read to or by him or her, unless such examination and reading are waived by the deponent or by all other parties in interest. Any changes in form or substance which the deponent desires to make must be entered upon the deposition by the officer with a statement of the reasons given by the deponent for making them. The deposition must then be signed by the deponent, unless the parties in interest by stipulation waive the signing, or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent, the officer must sign it and state on the record the fact of the waiver, or of the illness or absence of the deponent or the fact of the refusal to sign together with the reason, if any, given therefor; the deposition may then be used as fully as though signed, unless the OHA deciding official holds that the reason given for refusal to sign requires rejection of the deposition in whole or in part.

(g) *Certificates by officer.* The officer must certify on the deposition that the deponent was duly sworn by the officer and that the deposition is a true record of the deponent's testimony. The officer must then securely seal the deposition, together with two copies thereof, in an envelope and must personally deliver or mail the same by certified or registered mail to the OHA deciding official.

(h) *Use of depositions.* A deposition ordered and taken in accord with the provisions of this section may be used in a hearing if the OHA deciding official finds that the witness is absent and that his or her presence cannot be readily obtained, that the evidence is otherwise admissible, and that circumstances exist that make it desirable in the interest of fairness to allow the deposition to be used. If a deposition has been taken, and the party in interest on whose application it was taken refuses to offer the deposition, or any part thereof, in evidence, any other party in interest or the OHA deciding official may introduce the deposition or any portion thereof on which he or she wishes to rely.

**§ 4.222 Written interrogatories; admission of facts and documents.**

At any time prior to a hearing and in sufficient time to permit answers to be filed before the hearing, a party in interest may serve upon any other party in interest written interrogatories and requests for admission of facts and documents. A copy of such interrogatories and requests must be filed with the OHA deciding official. Such interrogatories and requests for admission must be drawn with the purpose of defining the issues in dispute between the parties and facilitating the presentation of evidence at the hearing. Answers must be served upon the party propounding the written interrogatories or requesting the admission of facts and documents within 30 days from the date of service of such interrogatories or requests, or within such other period of time as may be agreed upon by the parties or prescribed by the OHA deciding official. A copy of the answer must be filed with the OHA deciding official. Within 10 days after written interrogatories are served upon a party, that party may serve cross-interrogatories for answer by the witness to be interrogated.

**§ 4.223 Objections to and limitations on production of documents, depositions, and interrogatories.**

The OHA deciding official, upon motion timely made by any party in interest, proper notice, and good cause shown, may direct that proceedings under §§ 4.220, 4.221, and 4.222 may be conducted only under, and in accordance with, such limitation as he or she deems necessary and appropriate as to documents, time, place, and scope. The OHA deciding official may act on his or her own motion only if undue delay, dilatory tactics, and unreasonable

demands are made so as to delay the orderly progress of the proceeding or cause unacceptable hardship upon a party or witness.

**§ 4.224 Failure to comply with orders.**

In the event of the failure of a party to comply with a request for the production of a document under § 4.220; or on the failure of a party to appear for examination under § 4.221 or on the failure of a party to respond to interrogatories or requests for admissions under § 4.222; or on the failure of a party to comply with an order of the OHA deciding official issued under § 4.223 without, in any of such events, showing an excuse or explanation satisfactory to the OHA deciding official for such failure, the OHA deciding official may:

(a) Decide the fact or issue relating to the material requested to be produced, or the subject matter of the probable testimony, in accordance with the claims of the other party in interest or in accordance with other evidence available to the OHA deciding official; or

(b) Make such other ruling as the OHA deciding official determines just and proper.

**§ 4.225 Prehearing conference.**

The OHA deciding official may, upon his or her own motion or upon the request of any party in interest, call upon the parties to appear for a conference to:

(a) Simplify or clarify the issues;

(b) Obtain stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(c) Limit the number of expert or other witnesses in avoidance of excessively cumulative evidence;

(d) Effect possible agreement disposing of all or any of the issues in dispute; and

(e) Resolve such other matters as may simplify and shorten the hearing.

## Hearings

**§ 4.230 Authority and duties of the OHA deciding official.**

The authority of the OHA deciding official in all hearings in estate proceedings includes, but is not limited to authority:

(a) To administer oaths and affirmations;

(b) To issue subpoenas under the provisions of 25 U.S.C. 374 upon his or her own initiative or within his or her discretion upon the request of any party in interest, to any person whose testimony he or she believes to be material to a hearing. Upon the failure or refusal of any person upon whom a subpoena has been served to appear at a hearing or to testify, the OHA deciding official may file a petition in the appropriate U.S. District Court for the issuance of an order requiring the appearance and testimony of the witness:

(c) To permit any party in interest to cross-examine any witness;

(d) To appoint a guardian ad litem to represent any minor or incompetent party in interest at hearings;

(e) To rule upon offers of proof and receive evidence;

(f) To take and cause depositions to be taken and to determine their scope; and

(g) To otherwise regulate the course of the hearing and the conduct of witnesses, parties in interest, and attorneys at law appearing therein.

**§ 4.231 Hearings.**

(a) All testimony in Indian probate hearings must be under oath and must be taken in public except in those circumstances which in the opinion of the OHA deciding official justify all but parties in interest to be excluded from the hearing.

(b) The proceedings of hearings must be recorded verbatim.

(c) The record must include a showing of the names of all parties in interest and of attorneys who attended such hearing.

**§ 4.232 Evidence; form and admissibility.**

(a) Parties in interest may offer at a hearing such relevant evidence as they deem appropriate under the generally accepted rules of evidence of the State in which the evidence is taken, subject to the OHA deciding official's supervision as to the extent and manner of presentation of such evidence.

(b) The OHA deciding official may admit letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, the weight to be attached to evidence presented in any particular form being within the discretion of the OHA deciding official, taking into consideration all the circumstances of the particular case.

(c) Stipulations of fact and stipulations of testimony that would be given by witnesses were such witnesses present, agreed upon by the parties in interest, may be used as evidence at the hearing.

(d) The OHA deciding official may in any case require evidence in addition to that offered by the parties in interest.

**§ 4.233 Proof of wills, codicils, and revocations.**

(a) *Self-proved wills.* A will executed as provided in § 4.260 may, at the time of its execution, be made self-proved, and testimony of the witnesses in the probate thereof may be made unnecessary by the affidavits of the testator and attesting witnesses, made before an officer authorized to administer oaths, such affidavits to be attached to such will and to be in form and contents substantially as follows:

State of _____ County of _____ ss. I, _____, being first duly sworn, on oath, depose and say: That I am an ____ (enrolled or unenrolled) member of the _____ Tribe of Indians in the State of _____; that on the ____ day of _____, 19____, I requested _____ to prepare a will for me; that the attached will was prepared and I requested _____ and _____ to act as witnesses thereto; that I declared to said witnesses that said instrument was my last will and testament; that I signed said will in the presence of both witnesses and they signed the same as witnesses in my presence and in the presence of each other; that said will was read and explained to me (or read by me), after being prepared and before I signed it and it clearly and accurately expresses my wishes; and that I willingly made and executed said will as my free and voluntary act and deed for the purposes therein expressed.

**Testator/Testatrix**

We, _____ and_____, each being first duly sworn, on oath, depose and state: That on the ____day of _____, 19____, _____ a member of the _____ Tribe of Indians of the State of _____, published and declared the attached instrument to be his/her last will and testament, signed the same in the presence of both of us and requested both of us to sign the same as witnesses; that we, in compliance with his/her request, signed the same as witnesses in his/her presence and in the presence of each other; that said testator/testatrix was not acting under duress, menace, fraud, or undue influence of any person, so far as we could ascertain, and in our opinion was mentally capable of disposing of all his/her estate by will.

_____
Witness

_____
Witness

Subscribed and sworn to before me this_____ day of_____, 19____,by _____testator/testatrix, and by

_____and _____; attesting witnesses.

_____

_____
(Title)
If uncontested, a self-proved will may be approved and distribution ordered thereunder with or without the testimony of any attesting witness.

(b) *Self-proved codicils and revocations.* A codicil to, or a revocation of, a will may be made self-proved in the same manner as provided in paragraph (a) of this section with respect to a will.

(c) *Will contest.* If the approval of a will, codicil thereto, or revocation thereof is contested, the attesting witnesses who are in the reasonable vicinity of the place of hearing and who are of sound mind must be produced and examined. If none of the attesting witnesses resides in the reasonable vicinity of the place of hearing at the time appointed for proving the will, the OHA deciding official may admit the testimony of other witnesses to prove the testamentary capacity of the testator and the execution of the will and, as evidence of the execution, the OHA deciding official may admit proof of the handwriting of the testator and of the attesting witnesses, or of any of them. The provisions of § 4.232 are applicable with respect to remaining issues.

**§ 4.234 Witnesses, interpreters, and fees.**

Parties in interest who desire a witness to testify or an interpreter to serve at a hearing must make their own financial and other arrangements therefor, and subpoenas will be issued where necessary and proper. The OHA deciding official may call witness and interpreters and order payment out of the estate assets of per diem, mileage, and subsistence at a rate not to exceed that allowed to witnesses called in the U.S. District Courts. In hardship situations, the OHA deciding official may order payment of per diem and mileage for indispensable witnesses and interpreters called for the parties. In the order for payment he or she must specify whether such costs are to be allocated and charged against the interest of the party calling the witness or against the estate generally. Costs of administration so allowed will have a priority for payment greater than that for any creditor claims allowed. Upon receipt of such order, the Superintendent must immediately initiate payment of such sums from the estate account, or if such funds are insufficient, then out of funds as they are received in such account prior to closure of the estate, with the proviso that such costs must be paid in full with a later allocation against the interest of a party, if the OHA deciding official has so ordered.

**§ 4.235 Supplemental hearings.**

After the matter has been submitted but prior to the time the OHA deciding official has rendered his or her decision, the OHA deciding official may upon his or her own motion or upon motion of any party in interest schedule a supplemental hearing if he or she deems it necessary. The notice must set forth the purpose of the supplemental hearing and must be served upon all parties in interest in the manner provided in § 4.211. Where the need for such supplemental hearing becomes apparent during any hearing, the OHA deciding official may announce the time and place for such supplemental hearing to all those present and no further notice need be given. In that event the records must clearly show who was present at the time of the announcement.

**§ 4.236 Record.**

(a) After the completion of the hearing, the OHA deciding official will make up the official record containing:

(1) A copy of the posted public notice of hearing showing the posting certifications;

(2) A copy of each notice served on interested parties with proof of mailing;

(3) The record of the evidence received at the hearing, including any transcript made of the testimony;

(4) Claims filed against the estate;

(5) Will and codicils, if any;

(6) Inventories and valuations of the estate;

(7) Pleadings and briefs filed;

(8) Special or interim orders;

(9) Data for heirship finding and family history;

(10) The decision and the notices thereof; and

(11) Any other material or documents deemed material by the OHA deciding official.

(b) The OHA deciding official must lodge the original record with the designated Land Titles and Records Office in accordance with 25 CFR part 150. A duplicate copy must be lodged with the Superintendent originating the probate. A partial record may also be furnished to the Superintendents of other affected agencies. In those cases in which a hearing transcript has not been prepared, the verbatim recording of the hearing must be retained in the office of the OHA deciding official issuing the decision until the time allowed for rehearing or appeal has expired. In cases in which a transcript is not prepared, the original record returned to the Land Titles and Records Office must contain a statement indicating no transcript was prepared.

**Decisions**

**§ 4.240 Decision of the OHA deciding official and notice thereof.**

(a) The OHA deciding official must decide the issues of fact and law involved in the proceedings and must incorporate the following in his or her decision:

(1) In all cases, the names, birth dates, relationships to the decedent, and shares of heirs with citations to the law of descent and distribution in accordance with which the decision is made; or the fact that the decedent died leaving no legal heirs.

(2) In testate cases, (i) approval or disapproval of the will with construction of its provisions, (ii) the names and relationship to the testator of all beneficiaries and a description of the property which each is to receive;

(3) Allowance or disallowance of claims against the estate;

(4) Whether heirs or devisees are non-Indian, exclusively alien Indians, or Indians whose property is not subject to Federal supervision.

(5) A determination of any rights of dower, curtesy or homestead which may constitute a burden upon the interest of the heirs.

(b) When the OHA deciding official issues a decision, he or she must issue a notice thereof to all parties who have or claim any interest in the estate and must mail a copy of said notice, together with a copy of the decision to the Superintendent and to each party in interest simultaneously. The decision will not become final and no distribution may be made thereunder until the expiration of the 60 days allowed for the filing of a petition for rehearing by aggrieved parties as provided in § 4.241.

**§ 4.241 Rehearing.**

(a) Any person aggrieved by the decision of the OHA deciding official may, within 60 days after the date on which notice of the decision is mailed to the interested parties, file with the OHA deciding official a written petition for rehearing. Such petition must be under oath and must state specifically and concisely the grounds upon which it is based. If the petition is based on newly-discovered evidence, it must be accompanied by affidavits or declarations of witnesses stating fully what the new testimony is to be. It must also state justifiable reasons for the failure to discover and present that evidence, tendered as new, at the hearings held prior to the issuance of the decision. The OHA deciding official,

upon receiving a petition for rehearing, must promptly forward a copy to the Superintendent. The Superintendent must not initiate payment of claims or distribute the estate while such petition is pending, unless otherwise directed by the OHA deciding official.

(b) If proper grounds are not shown, or if the petition is not filed within the time prescribed in paragraph (a) of this section, the OHA deciding official will issue an order denying the petition and must set forth therein his or her reasons therefor. The OHA deciding official must furnish copies of such order to the petitioner, the Superintendent, and the parties in interest.

(c) If the petition appears to show merit, the OHA deciding official must cause copies of the petition and supporting papers to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition. The OHA deciding official must allow all persons served a reasonable, specified time in which to submit answers or legal briefs in opposition to the petition. The OHA deciding official will then reconsider, with or without hearing as he or she may determine, the issues raised in the petition; he or she may adhere to the former decision, modify or vacate it, or make such further order as is warranted.

(d) Upon entry of a final order the OHA deciding official must lodge the complete record relating to the petition with the title plant designated under § 4.236(b), and furnish a duplicate record thereof to the Superintendent.

(e) Successive petitions for rehearing are not permitted, and except for the issuance of necessary orders nunc pro tunc to correct clerical errors in the decision, the jurisdiction of the OHA deciding official terminates upon the issuance of a decision finally disposing of a petition for rehearing. Nothing herein will be construed as a bar to the remand of a case by the Board for further hearing or rehearing after appeal.

(f) At the time the final decision is entered following the filing of a petition for rehearing, the OHA deciding official must direct a notice of such action with a copy of the decision to the Superintendent and to the parties in interest and must mail the same by regular mail to the said parties at their addresses of record.

(g) No distribution may be made under such order for a period of 60 days following the mailing of a notice of decision pending the filing of a notice of appeal by an aggrieved party as herein provided.

**§ 4.242 Reopening.**

(a) Within a period of 3 years from the date of a final decision issued by an OHA deciding official or by the Board but not thereafter except as provided in §§ 4.203 and 4.206, any person claiming an interest in the estate who had no actual notice of the original proceedings and who was not on the reservation or otherwise in the vicinity at any time while the public notices of the hearing were posted may file a petition in writing for reopening of the case. Any such petition must be addressed to the OHA deciding official and filed at his or her office. A copy of such petition must be furnished also by the petitioner to the Superintendent. All grounds for the reopening must be set forth fully. If based on alleged errors of fact, all such allegations must be under oath and supported by affidavits.

(b) If the OHA deciding official finds that proper grounds are not shown, he or she will issue an order denying the petition and setting forth the reasons for such denial. Copies of the OHA deciding official's decision must be mailed to the petitioner, the Superintendent, and to those persons who share in the estate.

(c) If the petition appears to show merit, the OHA deciding official must cause copies of the petition and all papers filed by the petitioner to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition. Such persons may resist such petition by filing answers, cross-petitions, or briefs. Such filings must be made within such reasonable time periods as the OHA deciding official specifies. The OHA deciding official will then reconsider, with or without hearing as he or she may determine, prior actions taken in the case and may either adhere to, modify, or vacate the original decision. Copies of the OHA deciding official's decision must be mailed to the petitioner, to all persons who received copies of the petition, and to the Superintendent.

(d) To prevent manifest error an OHA deciding official may reopen a case within a period of 3 years from the date of the final decision, after due notice on his or her own motion, or on petition of a BIA officer. Copies of the OHA deciding official's decision must be mailed to all parties in interest and to the Superintendent.

(e) The OHA deciding official may suspend distribution of the estate or the income therefrom during the pendency of reopening proceedings by order directed to the Superintendent.

(f) The OHA deciding official must lodge the record made in disposing of a reopening petition with the title plant designated under § 4.236(b) and must furnish a duplicate record thereof to the Superintendent.

(g) No distribution may be made under a decision issued pursuant to paragraph (b), (c), or (d) of this section for a period of 60 days following the mailing of the copy of the decision as therein provided, pending the filing of a notice of appeal by an aggrieved party.

(h) If a petition for reopening is filed more than 3 years after the entry of a final decision in a probate, it will be allowed only upon a showing that a manifest injustice will occur; that a reasonable possibility exists for correction of the error; that the petitioner had no actual notice of the original proceedings; and that petitioner was not on the reservation or otherwise in the vicinity at any time while the public notices were posted. A denial of such petition may be made by the OHA deciding official on the basis of the petition and available BIA records. No such petition will be granted, however, unless the OHA deciding official has caused copies of the petition and all other papers filed by the petitioner to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition, and after allowing such persons an opportunity to resist such petition by filing answers, cross petitions or briefs as provided in paragraph (c) of this section.

## Appeals From Decisions of BIA Deciding Officials

**§ 4.243 Appeals from BIA.**

Any appeal filed pursuant to 25 CFR part 15, subpart E, will be referred to an OHA deciding official pursuant to § 4.210. The OHA deciding official will review the merits of the case de novo and conduct a hearing as necessary or appropriate pursuant to the regulations in this subpart. The BIA deciding official must forward to the OHA deciding official all documents and other evidence upon which the BIA deciding official's decision was based.

## Claims

**§ 4.250 Filing and proof of creditor claims; limitations.**

(a) All claims against the estate of a deceased Indian must be filed with the agency

(i) Within 60 days from the date BIA receives a certified copy of the death certificate or other verification of the decedent's death under 25 CFR 15.101 or

(ii) Within 20 days from the date the creditor is chargeable with notice of the

decedent's death, whichever of these dates is later.

(b) No claim will be paid from trust or restricted assets when the OHA deciding official is aware that the decedent's non-trust estate may be available to pay the claim.

(c) All claims must be filed in triplicate, itemized in detail as to dates and amounts of charges for purchases or services and dates and amounts of payments on account. Such claims must show the names and addresses of all parties in addition to the decedent from whom payment might be sought. Each claim must be supplemented by an affidavit, in triplicate, of the claimant or someone in his or her behalf that the amount claimed is justly due from the decedent, that no payments have been made on the account which are not credited thereon as shown by the itemized statement, and that there are no offsets to the knowledge of the claimant.

(d) Claims for care may not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected.

(e) A claim based on a written or oral contract, express or implied, where the claim for relief has existed for such a period as to be barred by the State laws at date of decedent's death, cannot be allowed.

(f) Claims sounding in tort not reduced to judgment in a court of competent jurisdiction, and other unliquidated claims not properly within the jurisdiction of a probate forum, may be barred from consideration by an interim order from the OHA deciding official.

(g) Claims of a State or any of its political subdivisions on account of social security or old-age assistance payments will not be allowed.

### § 4.251 Priority of claims.

(a) Upon motion of the Superintendent or a party in interest, the OHA deciding official may authorize payment of the costs of administering the estate as they arise and prior to the allowance of any claims against the estate.

(b) After the costs of administration, the OHA deciding official may authorize payment of priority claims as follows:

(1) Claims for funeral expenses (including the cemetery marker);

(2) Claims for medical expenses for the last illness;

(3) Claims for nursing home or other care facility expenses;

(4) Claims of an Indian tribe; and

(5) Claims reduced to judgment by a court of competent jurisdiction.

(c) After the priority claims, the OHA deciding official may authorize payment of all remaining claims, referred to as general claims.

(d) The OHA deciding official has the discretion to decide that part or all of an otherwise valid claim is unreasonable, reduce the claim to a reasonable amount, or disallow the claim in its entirety.

(1) If a claim is reduced, the OHA deciding official will order payment only of the reduced amount.

(2) An OHA deciding official may reduce or disallow both priority claims and general claims.

(e) If, as of the date of the hearing, there is not enough money in the IIM account to pay all claims, the OHA deciding official will order payment of allowed priority claims first, either in the order identified in paragraph (b) of this section or on a pro rata (reduced) basis.

(f) If, as of the date of the hearing, less than $1,000 remains in the IIM account after payment of priority claims is ordered, the general claims may be ordered paid on a pro rata basis or disallowed in their entirety.

(g) The unpaid balance of any claims will not be enforceable against the estate after the estate is closed.

(h) Interest or penalties charged against either priority or general claims after the date of death will not be paid.

### § 4.252 Property subject to claims.

Claims are payable from income from the lands remaining in trust. Further, except as prohibited by law, all trust moneys of the deceased on hand or accrued at time of death, including bonds, unpaid judgments, and accounts receivable, may be used for the payment of claims, whether the right, title, or interest that is taken by an heir, devisee, or legatee remains in or passes out of trust.

## Wills

### § 4.260 Making of a will; review as to form; revocation.

(a) An Indian 18 years of age or over and of testamentary capacity, who has any right, title, or interest in trust property, may dispose of such property by a will executed in writing and attested by two disinterested adult witnesses.

(b) When an Indian executes a will and submits the same to the Superintendent, the Superintendent must forward it to the Office of the Solicitor for examination as to adequacy of form, and for submission by the Office of the Solicitor to the Superintendent of any appropriate comments. The will, codicil, or any replacement or copy thereof, may be retained by the Superintendent at the request of the testator or testatrix for safekeeping. A will must be held in absolute confidence, and no person other than the testator may admit its existence or divulge its contents prior to the death of the testator.

(c) The testator may, at any time during his or her lifetime, revoke his or her will by a subsequent will or other writing executed with the same formalities as are required in the case of the execution of a will, or by physically destroying the will with the intention of revoking it. No will that is subject to the regulations of this subpart will be deemed to be revoked by operation of the law of any State.

### § 4.261 Anti-lapse provisions.

When an Indian testator devises or bequeaths trust property to any of his or her grandparents or to the lineal descendant of a grandparent, and the devisee or legatee dies before the testator leaving lineal descendants, such descendants will take the right, title, or interest so given by the will per stirpes. Relationship by adoption is equivalent to relationship by blood.

### § 4.262 Felonious taking of testator's life.

No person who has been finally convicted of feloniously causing the death or taking the life of, or procuring another person to take the life of, the testator, may take directly or indirectly any devise or legacy under deceased's will. All right, title, and interest existing in such a situation will vest and be determined as if the person convicted never existed, notwithstanding § 4.261.

## Custody and Distribution of Estates

### § 4.270 Custody and control of trust estates.

The Superintendent may assume custody or control of all tangible trust personal property of a deceased Indian, and the Superintendent may take such action, including sale thereof, as in his or her judgment is necessary for the benefit of the estate, the heirs, legatees, and devisees, pending entry of the decision provided for in 25 CFR 15.311 or in §§ 4.240, 4.241, or 4.312. All expenses, including expenses of roundup, branding, care, and feeding of livestock, are chargeable against the estate and may be paid from those funds of the deceased that are under the Department's control, or from the proceeds of a sale of the property or a part thereof. If an OHA deciding official or BIA deciding official has been assigned to adjudicate the estate, his or her approval is required prior to such payment.

**§ 4.271 Omitted property.**

(a) When, subsequent to the issuance of a decision under § 4.240 or § 4.312, it is found that trust property or interest therein belonging to a decedent has not been included in the inventory, the inventory can be modified to include such omitted property for distribution pursuant to the original decision. Such modification may be made either administratively by the Commissioner or by a modification order prepared by him or her for the approval and signature of the OHA deciding official. Copies of such modifications must be furnished to the Superintendent and to all those persons who share in the estate.

(b) When the property to be included takes a different line of descent from that shown in the original decision, the Commissioner must notify the OHA deciding official who will proceed to hold a hearing if necessary and will issue a decision under § 4.240. The record of any such proceeding must be lodged with the title plant designated under § 4.236(b).

**§ 4.272 Improperly included property.**

(a) When, subsequent to a decision under § 4.240 or § 4.312, it is found that property has been improperly included in the inventory of an estate, the inventory must be modified to eliminate such property. A petition for modification may be filed by the Superintendent of the Agency where the property is located, or by any party in interest.

(b) The OHA deciding official will review the record of the title upon which the modification is to be based, and enter an appropriate decision. If the decision is entered without a hearing, the OHA deciding official must give notice of his or her action to all parties whose rights are adversely affected allowing them 60 days in which to show cause why the decision should not then become final.

(c) Where appropriate the OHA deciding official may conduct a hearing at any stage of the modification proceeding. Any such hearing must be scheduled and conducted in accordance with the rules of this subpart. The OHA deciding official will enter a final decision based on his or her findings, modifying or refusing to modify the property inventory, and his or her decision will become final at the end of 60 days from the date it is mailed unless a notice of appeal is filed by an aggrieved party within such period. Notice of entry of the decision must be given in accordance with § 4.240(b).

(d) A party aggrieved by the OHA deciding official's decision may appeal to the Board pursuant to the procedures in §§ 4.310 through 4.323.

(e) The record of all proceedings must be lodged with the title plant designated under § 4.236(b).

**§ 4.273 Distribution of estates.**

(a) Seventy-five days after a final order has been issued, unless the Superintendent has received a copy of a petition for rehearing filed pursuant to the requirements of § 4.241(a) or a copy of a notice of appeal filed pursuant to the requirements of § 4.320(b), he or she must initiate payment of allowed claims, distribution of the estate, and all other actions required by the OHA deciding official's final order.

(b) The Superintendent must not initiate the payment of claims or distribution of the estate during the pendency of proceedings under § 4.241 or § 4.242, unless the OHA deciding official orders otherwise in writing. The Board may, at any time, authorize the OHA deciding official to issue interim orders for payment of claims or for partial distribution during the pendency of proceedings on appeal.

## Miscellaneous

**§ 4.281 Claims for attorney fees.**

(a) Attorneys representing Indians in proceedings under these regulations may be allowed fees therefor by the OHA deciding official. At the discretion of the OHA deciding official, such fees may be chargeable against the interests of the party thus represented, or where appropriate, they may be taxed as a cost of administration. Petitions for allowance of fees must be filed prior to the close of the last hearing and must be supported by such proof as is required by the OHA deciding official. In determining attorney fees, consideration must be given to the fact that the property of the decedent is restricted or held in trust and that it is the duty of the Department to protect the rights of all parties in interest.

(b) Nothing herein prevents an attorney from petitioning for additional fees to be considered at the disposition of a petition for rehearing and again after an appeal on the merits. An order allowing an attorney's fees is subject to a petition for rehearing and to an appeal.

**§ 4.282 Guardians for incompetents.**

Minors and other legal incompetents who are parties in interest must be represented at all hearings by legally appointed guardians, or by guardians ad litem appointed by the OHA deciding official.

## Tribal Purchase of Interests Under Special Statutes

**§ 4.300 Authority and scope.**

(a) The rules and procedures set forth in §§ 4.300 through 4.308 apply only to proceedings in Indian probate which relate to the tribal purchase of a decedent's interests in trust and restricted land as provided by:

(1) The Act of December 31, 1970 (Pub. L. 91–627; 84 Stat. 1874; 25 U.S.C. 607 (1976)), amending section 7 of the Act of August 9, 1946 (60 Stat. 968), with respect to trust or restricted land within the Yakima Reservation or within the area ceded by the Treaty of June 9, 1855 (12 Stat. 1951);

(2) The Act of August 10, 1972 (Pub. L. 92–377; 86 Stat. 530), with respect to trust or restricted land within the Warm Springs Reservation or within the area ceded by the Treaty of June 25, 1855 (12 Stat. 37); and

(3) The Act of September 29, 1972 (Pub. L. 92–443; 86 Stat. 744), with respect to trust or restricted land within the Nez Perce Indian Reservation or within the area ceded by the Treaty of June 11, 1855 (12 Stat. 957).

(b)(1) In the exercise of probate authority, an OHA deciding official will determine:

(i) The entitlement of a tribe to purchase a decedent's interests in trust or restricted land under the statutes;

(ii) The entitlement of a surviving spouse to reserve a life estate in one-half of the surviving spouse's interests which have been purchased by a tribe; and

(iii) The fair market value of such interests, including the value of any life estate reserved by a surviving spouse.

(2) In the determination under paragraph (b)(1) of this section of the entitlement of a tribe to purchase the interests of an heir or devisee, the issues of

(i) Enrollment or refusal of the tribe to enroll a specific individual and

(ii) Specification of blood quantum, where pertinent, will be determined by the official tribal roll which is binding upon the OHA deciding official. For good cause shown, the OHA deciding official may stay the probate proceeding to permit an aggrieved party to pursue an enrollment application, grievance, or appeal through the established procedures applicable to the tribe.

**§ 4.301 Valuation report.**

(a) In all probates, at the earliest possible stage of the proceeding before issuance of a probate decision, the BIA must furnish a valuation of the decedent's interests when the record reveals to the Superintendent:

(1) That the decedent owned interests in land located on one or more of those reservations designated in § 4.300 and

(2) That any one or more of the probable heirs or devisees, who may become a distributee of such interests upon completion of the probate proceeding, is not enrolled in or does not have the required blood quantum in the tribe of the reservation where the land is located to hold such interests against a claim thereto made by the tribe. If there is a surviving spouse whose interests may be subject to the tribal option, the valuation must include the value of a life estate based on the life of the surviving spouse in one half of such interests. The valuation must be made on the basis of the fair market value of the property, including fixed improvements, as of the date of decedent's death.

(b) BIA must submit the valuation report in the probate package submitted to the OHA deciding official. Interested parties may examine and copy, at their expense, the valuation report at the office of the Superintendent or the OHA deciding official.

**§ 4.302 Conclusion of probate and tribal exercise of statutory option.**

(a) Conclusion of probate; findings in the probate decision. When a decedent is shown to have owned land interests in any one or more of the reservations mentioned in the statutes enumerated in § 4.300, the probate proceeding relative to the determination of heirs, approval or disapproval of a will, and the claims of creditors will first be concluded as final for the Department in accordance with §§ 4.200 through 4.282 and §§ 4.310 through 4.323. This decision will be referred to herein as the ''probate decision.'' At the probate hearing a finding must be made on the record showing those interests in land, if any, which are subject to the tribal option. The finding must be reduced to writing in the probate decision setting forth the apparent rights of the tribe as against affected heirs or devisees and the right of a surviving spouse whose interests are subject to the tribal option to reserve a life estate in one-half of such interests. If the finding is that there are no interests subject to the tribal option, the decision must so state. A copy of the probate decision, to which must be attached a copy of the valuation report, must be distributed to all parties in interest in accordance with §§ 4.201 and 4.240.

(b) Tribal exercise of statutory option. A tribe may purchase all or a part of the available interests specified in the probate decision within 60 days from the date of the probate decision unless a petition for rehearing or a demand for hearing has been filed in accordance with § 4.304 or 4.305. If a petition for rehearing or a demand for hearing has been filed, a tribe may purchase all or a part of the available interests specified in the probate decision within 20 days from the date of the decision on rehearing or hearing, whichever is applicable. A tribe may not, however, claim an interest less than the decedent's total interest in any one individual tract. The tribe must file a written notice of purchase with the Superintendent, together with the tribe's certification that copies thereof have been mailed on the same date to the OHA deciding official and to the affected heirs or devisees. Upon failure to timely file a notice of purchase, the right to distribution of all unclaimed interests will accrue to the heirs or devisees.

**§ 4.303 Notice by surviving spouse to reserve a life estate.**

When the heir or devisee whose interests are subject to the tribal option is a surviving spouse, the spouse may reserve a life estate in one-half of such interests. The spouse must file a written notice to reserve with the Superintendent within 30 days after the tribe has exercised its option to purchase the interest in question, together with a certification that copies thereof have been mailed on the same date to the OHA deciding official and the tribe. Failure to timely file a notice to reserve a life estate will constitute a waiver thereof.

**§ 4.304 Rehearing.**

Any party in interest aggrieved by the probate decision may, within 60 days from the date of the probate decision, file with the OHA deciding official a written petition for rehearing in accordance with § 4.241.

**§ 4.305 Hearing.**

(a) *Demand for hearing.* Any party in interest aggrieved by the exercise of the tribal option to purchase the interests in question or the valuation of the interests as set forth in the valuation report may, within 60 days from the date of the probate decision or 60 days from the date of the decision on rehearing, whichever is applicable, file with the OHA deciding official a written demand for hearing, together with a certification that copies thereof have been mailed on the same date to the Superintendent and to each party in interest; provided, however, that an aggrieved party will have at least 20 days from the date the tribe exercises its option to purchase available interests to file such a demand. The demand must state specifically and concisely the grounds upon which it is based.

(b) *Notice; burden of proof.* The OHA deciding official will, upon receipt of a demand for hearing, set a time and place therefor and must mail notice thereof to all parties in interest not less than 30 days in advance; provided, however, that such date must be set after the expiration of the 60-day period fixed for the filing of the demand for hearing as provided in § 4.305(a). At the hearing, each party challenging the tribe's claim to purchase the interests in question or the valuation of the interests as set forth in the valuation report will have the burden of proving his or her position.

(c) *Decision after hearing; appeal.* Upon conclusion of the hearing, the OHA deciding official will issue a decision which determines all of the issues including, but not limited to, a judgment establishing the fair market value of the interests purchased by the tribe, including any adjustment thereof made necessary by the surviving spouse's decision to reserve a life estate in one-half of the interests. The decision must specify the right of appeal to the Board of Indian Appeals within 60 days from the date of the decision in accordance with §§ 4.310 through 4.323. The OHA deciding official must lodge the complete record relating to the demand for hearing with the title plant as provided in § 4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.

**§ 4.306 Time for payment.**

A tribe must pay the full fair market value of the interests purchased, as set forth in the valuation report or as determined after hearing in accordance with § 4.305, whichever is applicable, within 2 years from the date of decedent's death or within 1 year from the date of notice of purchase, whichever comes later.

**§ 4.307 Title.**

Upon payment by the tribe of the interests purchased, the Superintendent must issue a certificate to the OHA deciding official that this has been done and file therewith such documents in support thereof as the OHA deciding official may require. The OHA deciding official will then issue an order that the United States holds title to such interests in trust for the tribe, lodge the complete record, including the decision, with the title plant as provided in § 4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a

copy of the decision to each party in interest.

**§ 4.308 Disposition of income.**

During the pendency of the probate and up to the date of transfer of title to the United States in trust for the tribe in accordance with § 4.307, all income received or accrued from the land interests purchased by the tribe will be credited to the estate.

## General Rules Applicable to Proceedings on Appeal Before the Interior Board of Indian Appeals

**§ 4.310 Documents.**

(a) *Filing.* The effective date for filing a notice of appeal or other document with the Board during the course of an appeal is the date of mailing or the date of personal delivery, except that a motion for the Board to assume jurisdiction over an appeal under 25 CFR 2.20(e) will be effective the date it is received by the Board.

(b) *Service.* Notices of appeal and pleadings must be served on all parties in interest in any proceeding before the Interior Board of Indian Appeals by the party filing the notice or pleading with the Board. Service must be accomplished upon personal delivery or mailing. Where a party is represented in an appeal by an attorney or other representative authorized under 43 CFR 1.3, service of any document on the attorney or representative is service on the party. Where a party is represented by more than one attorney, service on any one attorney is sufficient. The certificate of service on an attorney or representative must include the name of the party whom the attorney or representative represents and indicate that service was made on the attorney or representative.

(c) *Computation of time for filing and service.* Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed or answered was served or the day of any other event after which a designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays, and other nonbusiness days are excluded in the computation.

(d) *Extensions of time.* (1) The time for filing or serving any document except a notice of appeal may be extended by the Board.

(2) A request to the Board for an extension of time must be filed within the time originally allowed for filing.

(3) For good cause the Board may grant an extension of time on its own initiative.

(e) *Retention of documents.* All documents received in evidence at a hearing or submitted for the record in any proceeding before the Board will be retained with the official record of the proceeding. The Board, in its discretion, may permit the withdrawal of original documents while a case is pending or after a decision becomes final upon conditions as required by the Board.

**§ 4.311 Briefs on appeal.**

(a) The appellant may file an opening brief within 30 days after receipt of the notice of docketing. Appellant must serve copies of the opening brief upon all interested parties or counsel and file a certificate with the Board showing service upon the named parties. Opposing parties or counsel will have 30 days from receipt of appellant's brief to file answer briefs, copies of which must be served upon the appellant or counsel and all other parties in interest. A certificate showing service of the answer brief upon all parties or counsel must be attached to the answer filed with the Board.

(b) Appellant may reply to an answering brief within 15 days from its receipt. A certificate showing service of the reply brief upon all parties or counsel must be attached to the reply filed with the Board. Except by special permission of the Board, no other briefs will be allowed on appeal.

(c) The BIA is considered an interested party in any proceeding before the Board. The Board may request that the BIA submit a brief in any case before the Board.

(d) An original only of each document should be filed with the Board. Documents should not be bound along the side.

(e) The Board may also specify a date on or before which a brief is due. Unless expedited briefing has been granted, such date may not be less than the appropriate period of time established in this section.

**§ 4.312 Decisions.**

Decisions of the Board will be made in writing and will set forth findings of fact and conclusions of law. The decision may adopt, modify, reverse or set aside any proposed finding, conclusion, or order of a BIA official or an OHA deciding official. Distribution of decisions must be made by the Board to all parties concerned. Unless otherwise stated in the decision, rulings by the Board are final for the Department and must be given immediate effect.

**§ 4.313 Amicus Curiae; intervention; joinder motions.**

(a) Any interested person or Indian tribe desiring to intervene or to join other parties or to appear as amicus curiae or to obtain an order in an appeal before the Board must apply in writing to the Board stating the grounds for the action sought. Permission to intervene, to join parties, to appear, or for other relief, may be granted for purposes and subject to limitations established by the Board. This section will be liberally construed.

(b) Motions to intervene, to appear as amicus curiae, to join additional parties, or to obtain an order in an appeal pending before the Board must be served in the same manner as appeal briefs.

**§ 4.314 Exhaustion of administrative remedies.**

(a) No decision of an OHA deciding official or a BIA official, which at the time of its rendition is subject to appeal to the Board, will be considered final so as to constitute agency action subject to judicial review under 5 U.S.C. 704, unless made effective pending decision on appeal by order of the Board.

(b) No further appeal will lie within the Department from a decision of the Board.

(c) The filing of a petition for reconsideration is not required to exhaust administrative remedies.

**§ 4.315 Reconsideration.**

(a) Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. Any party to the decision may petition for reconsideration. The petition must be filed with the Board within 30 days from the date of the decision and must contain a detailed statement of the reasons why reconsideration should be granted.

(b) A party may file only one petition for reconsideration.

(c) The filing of a petition will not stay the effect of any decision or order and will not affect the finality of any decision or order for purposes of judicial review, unless so ordered by the Board.

**§ 4.316 Remands from courts.**

Whenever any matter is remanded from any federal court to the Board for further proceedings, the Board will

either remand the matter to an OHA deciding official or to the BIA, or to the extent the court's directive and time limitations will permit, the parties will be allowed an opportunity to submit to the Board a report recommending procedures for it to follow to comply with the court's order. The Board will enter special orders governing matters on remand.

### § 4.317 Standards of conduct.

(a) *Inquiries about cases.* All inquiries with respect to any matter pending before the Board must be made to the Chief Administrative Judge of the Board or the administrative judge assigned the matter.

(b) *Disqualification.* An administrative judge may withdraw from a case in accordance with standards found in the recognized canons of judicial ethics if the judge deems such action appropriate. If, prior to a decision of the Board, a party files an affidavit of personal bias or disqualification with substantiating facts, and the administrative judge concerned does not withdraw, the Director of the Office of Hearings and Appeals will determine the matter of disqualification.

### § 4.318 Scope of review.

An appeal will be limited to those issues which were before the OHA deciding official upon the petition for rehearing, reopening, or regarding tribal purchase of interests, or before the BIA official on review. However, except as specifically limited in this part or in title 25 of the Code of Federal Regulations, the Board will not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate.

## Appeals to the Board of Indian Appeals in Probate Matters

### § 4.320 Who may appeal.

(a) A party in interest has a right to appeal to the Board from an order of an OHA deciding official on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate.

(b) Notice of appeal. Within 60 days from the date of the decision, an appellant must file a written notice of appeal signed by appellant, appellant's attorney, or other qualified representative as provided in 43 CFR 1.3, with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. A statement of the errors of fact and law upon which the appeal is based must be included in either the notice of appeal or in any brief filed. The notice of appeal must include the names and addresses of parties served. A notice of appeal not timely filed will be dismissed for lack of jurisdiction.

(c) Service of copies of notice of appeal. The appellant must personally deliver or mail the original notice of appeal to the Board of Indian Appeals. A copy must be served upon the OHA deciding official whose decision is appealed as well as all interested parties. The notice of appeal filed with the Board must include a certification that service was made as required by this section.

(d) Action by the OHA deciding official; record inspection. The OHA deciding official, upon receiving a copy of the notice of appeal, must notify the Superintendent concerned to return the duplicate record filed under §§ 4.236(b) and 4.241(d), or under § 4.242(f) of this part, to the Land Titles and Records Office designated under § 4.236(b) of this part. The duplicate record must be conformed to the original by the Land Titles and Records Office and will thereafter be available for inspection either at the Land Titles and Records Office or at the office of the Superintendent. In those cases in which a transcript of the hearing was not prepared, the OHA deciding official will have a transcript prepared which must be forwarded to the Board within 30 days from receipt of a copy of the notice of appeal.

### § 4.321 Notice of transmittal of record on appeal.

The original record on appeal must be forwarded by the Land Titles and Records Office to the Board by certified mail. Any objection to the record as constituted must be filed with the Board within 15 days of receipt of the notice of docketing issued under § 4.332 of this part.

### § 4.322 Docketing.

The appeal will be docketed by the Board upon receipt of the administrative record from the Land Titles and Records Office. All interested parties as shown by the record on appeal must be notified of the docketing. The docketing notice must specify the time within which briefs may be filed and must cite the procedural regulations governing the appeal.

### § 4.323 Disposition of the record.

Subsequent to a decision of the Board, other than remands, the record filed with the Board and all documents added during the appeal proceedings, including any transcripts prepared because of the appeal and the Board's decision, must be forwarded by the Board to the Land Titles and Records Office designated under § 4.236(b) of this part. Upon receipt of the record by the Land Titles and Records Office, the duplicate record required by § 4.320(c) of this part must be conformed to the original and forwarded to the Superintendent concerned.

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# Part V

# Department of the Treasury

## 31 CFR Part 103

## Financial Crimes Enforcement Network; Proposed Amendment to the Bank Secrecy Act Regulations—Requirement of Brokers or Dealers in Securities to Report Suspicious Transactions; Proposed Rule

**DEPARTMENT OF THE TREASURY**

**31 CFR Part 103**

**RIN 1506–AA21**

## Financial Crimes Enforcement Network; Proposed Amendment to the Bank Secrecy Act Regulations—Requirement of Brokers or Dealers in Securities to Report Suspicious Transactions

**AGENCY:** Financial Crimes Enforcement Network (''FinCEN''), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FinCEN is proposing to amend the Bank Secrecy Act regulations to require brokers or dealers in securities (''broker-dealers'') to report suspicious transactions to the Department of the Treasury. This is the fourth proposal to be issued by FinCEN concerning the reporting of suspicious transactions by the major categories of financial institutions operating in the United States, as a part of the counter-money laundering program of the Department of the Treasury.

**DATES:** Written comments on all aspects of the proposal are welcome and must be received on or before March 1, 2002.

**ADDRESSES:** Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 1618, Vienna, Virginia 22183–1618, *Attention:* NPRM—Suspicious Transaction Reporting—Brokers or Dealers in Securities. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov,* again with a caption, in the body of the text, ''*Attention:* NPRM—Suspicious Transaction Reporting—Brokers or Dealers in Securities.'' For additional instructions on the submission of comments, see **SUPPLEMENTARY INFORMATION** under the heading ''Submission of Comments.''

*Inspection of comments.* Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400.

**FOR FURTHER INFORMATION CONTACT:** Peter G. Djinis, Executive Assistant Director for Regulatory Policy, FinCEN, at (703) 905–3930; Cynthia L. Clark, Deputy Chief Counsel, FinCEN, at (703) 905–3590; Judith R. Starr, Chief Counsel, FinCEN, at (703) 905–3534.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. General Statutory Provisions*

The Bank Secrecy Act, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5331, authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

*B. Suspicious Transaction Reporting*

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g),[2] to require financial institutions to report suspicious transactions. Subsection (g)(1) states generally:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2) provides further:

> A financial institution, and a director, officer, employee, or agent of any financial institution, who voluntarily reports a suspicious transaction, or that reports a suspicious transaction pursuant to this section or any other authority, may not notify any person involved in the transaction that the transaction has been reported.

Subsection (g)(3) provides that neither a financial institution, nor any director, officer, employee, or agent of any financial institution

> that makes a disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority * * * shall * * * be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, ''to the extent practicable and appropriate,'' to designate ''a single officer or agency of the United States to whom such reports shall be made.''[3] The designated agency is in turn responsible for referring any report of a suspicious transaction to ''any appropriate law enforcement or supervisory agency.'' *Id.,* at subsection (g)(4)(B).

In the USA Patriot Act, Congress specifically addressed the issue of suspicious transaction reporting by broker-dealers. Section 356 of the USA Patriot Act requires Treasury, after consultation with the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System, to publish proposed regulations before January 1, 2002, requiring broker-dealers to report suspicious transactions under 31 U.S.C. 5318(g). Section 356 requires final regulations to be issued by July 2, 2002.[4]

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[1] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the ''USA Patriot Act''), Public Law 107–56.

[2] 31 U.S.C. 5318(g) was added to the Bank Secrecy Act by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act (the ''Annunzio-Wylie Anti-Money Laundering Act''), Title XV of the Housing and Community Development Act of 1992, Public Law 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994 (the ''Money Laundering Suppression Act''), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, to require designation of a single government recipient for reports of suspicious transactions.

[3] This designation does not preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency ''pursuant to any other applicable provision of law.'' 31 U.S.C. 5318(g)(4)(C).

[4] The Congressional mandate to extend suspicious transaction reporting to broker-dealers reflects the concern of other governmental and international bodies about the need for an appropriate suspicious transaction reporting regime in the securities industry. For example, one of the central recommendations of the Financial Action Task Force (''FATF''), an inter-governmental body whose purpose is development and promotion of policies to combat money laundering, is that:

> If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.

*Financial Action Task Force Annual Report* (June 28, 1996), Annex 1 (Recommendation 15). The recommendation applies equally to broker-dealers as to banks. *See also,* the European Community's *Directive on prevention of the use of the financial system for the purpose of money laundering. EC Directive,* O.J. Eur. Comm. (No. L 166) 77 (1991), Article 6. *Accord, the Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses of the Organization of American States,* OEA/Ser. P. AG/Doc. 2916/92 rev. 1 (May 23, 1992), Article 13, section 2.

The International Organization of Securities Commissions (''IOSCO'') recommended in 1992 that member states consider ''together with their national regulators charged with prosecuting money

*C. Anti-Money Laundering Programs*

The provisions of 31 U.S.C. 5318(h), also added to the Bank Secrecy Act in 1992 by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, authorize the Secretary of the Treasury ''[i]n order to guard against money laundering through financial institutions * * * [to] require financial institutions to carry out anti-money laundering programs.'' 31 U.S.C. 5318(h)(1). Those programs may include ''the development of internal policies, procedures, and controls''; ''the designation of a compliance officer''; ''an ongoing employee training program''; and ''an independent audit function to test programs.'' 31 U.S.C. 5318(h)(A–D).

Section 352 of the USA Patriot Act amended section 5318(h) to mandate compliance programs for all financial institutions defined in 31 U.S.C. 5312(a)(2). Section 352 of the USA Patriot Act is effective April 24, 2002.

*D. Broker-dealer Regulation and Money Laundering*

Broker-dealer operations are keyed primarily to the purchase and sale of securities both for customers and for their own accounts. Broker-dealers do not usually expect to receive from or disburse to customers significant amounts of currency, and they are not direct participants in the payment system. However, despite the limited use of currency in the normal course of broker-dealer business generally, there are broker-dealers that accept small amounts of currency or that accept currency transactions approved by a legal or compliance department.[5] In addition, while broker-dealers are not direct participants in the payment system, they do facilitate transfers or transmittals of funds for their customers.

Money laundering occurs through broker-dealers, as it does through all categories of financial institutions.[6] Although the known experience of depository institutions with significant money laundering is greater than the known experience of the securities industry with money laundering, this difference may reflect the fact that criminal funds enter broker-dealer accounts at a later stage in the laundering process, when those funds are less immediately identifiable than at the placement stage. Past investigative attention, however, has focused more intensively on the ''placement'' stage of money laundering (especially the suspicious placement into the financial system of large amounts of currency) than on transfers or conversions of illicit funds once they are already in the financial system. In addition, there may be reason to fear a potential increased use of broker-dealers for laundering purposes in the wake of the growth of the broker-dealer industry and as criminals develop new ways to launder money. The attention previously given to the prevention of money laundering through banks reflects the central role of banking institutions in the global payments system and the global economy. But broker-dealers also play a global role and their array of financial services is increasingly competitive with that of banks, for example, for high net worth individuals.

The regulation of the securities industry in general and of broker-dealers in particular relies on both the Securities and Exchange Commission and the registered securities associations and national securities exchanges (so-called self-regulatory organizations or ''SROs''). Broker-dealers have long reported possible securities law violations through existing relationships with law enforcement, the Securities and Exchange Commission and the SROs. Any effective system of suspicious transaction reporting needs to consider the existing broker-dealer regulatory structure, particularly existing procedures for reporting violations of securities laws. Both the Securities and Exchange Commission and the SROs have taken measures to address money laundering concerns at broker-dealers.[7] The Securities and Exchange Commission adopted rule 17a–8 in 1981 under the Securities and Exchange Act of 1934 (''Exchange Act''), which enables the SROs, subject to Securities and Exchange Commission oversight, to examine for Bank Secrecy Act compliance. Accordingly, both the Securities and Exchange Commission and SROs will address broker-dealer compliance with this rule.

Finally, certain broker-dealers have been subject to suspicious transaction reporting since 1996. In particular, broker-dealers that are affiliates or subsidiaries of banks or bank holding companies have been required to report suspicious transactions by virtue of the application to them of rules issued by the federal bank supervisory agencies. In April 1996, banks, thrifts, and other banking organizations became subject to a requirement to report suspicious transactions pursuant to final rules issued by FinCEN[8], under the authority contained in 31 U.S.C. 5318(g). In collaboration with FinCEN, the federal bank supervisors (the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration) concurrently issued suspicious transaction reporting rules under their own authority. *See* 12 CFR 208.62 (Federal Reserve Board); 12 CFR 21.11 (OCC); 12 CFR 353.3 (FDIC); 12 CFR 563.180 (OTS); and 12 CFR 748.1 (NCUA). The bank supervisory agency rules apply to banks, to non-depository

laundering offenses, the appropriate manner in which to address the identification and reporting of suspicious transactions'' and ''the appropriate means to ensure that securities and futures firms maintain monitoring and compliance procedures designed to deter and detect money laundering.'' IOSCO Report on Money Laundering, Conclusions 3 and 5, May 1992.

[5] Report to the Chairman, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, Anti-Money Laundering Efforts in the Securities Industry, GAO–02–111, October 2001 (''the GAO Report''). In addition, there are broker-dealers that accept cashier's checks, money orders, and traveler's checks. Of those broker-dealers that accept such financial instruments, 70 percent accept cashier's checks, nearly 40 percent accept money orders, and approximately 20 percent accept traveler's checks. *See,* the GAO Report at 26.

[6] *See, e.g., United States* v. *Kneeland,* 148 F.3d 6 (1st Cir. 1998) (funds obtained in ''advance fee'' fraud transferred from corporate to defendant's personal bank accounts, and from there to defendant's brokerage account, from brokerage account to commodities broker, and from commodities broker back to personal bank account); *United States* v. *Sabbath,* 125 F.Supp. Lexis 18999 (E.D.N.Y. 2000) (owner of failing company withdrew funds from corporation in months preceding bankruptcy, transferring those funds to a brokerage account in wife's maiden name, with mother-in-law's address, and a false social security number; money from corporation routed through several bank accounts before its final transfer to brokerage account); *United States* v. *Taylor,* 984 F.2d 298 (9th Cir. 1993) (funds received upon fraudulent export sale of cellular telephones laundered through brokerage account). *See also,* the GAO Report at 68–69.

[7] For example, in April 2001, the Director of the Office of Compliance Inspections and Examinations at the Securities and Exchange Commission announced that the Commission would undertake compliance sweeps of broker-dealers in the fall of 2001. *See* Money Laundering: It's on the SEC's Radar Screen, Remarks at the Conference on Anti-Money Laundering Compliance for Broker-Dealers Securities Industry Association (May 8, 2001) (transcript available at www.sec.gov/news/speech/spch486.htm). BSA compliance with non-SAR related provisions has been included in the SEC's examination and enforcement programs since the 1970s, and in the SROs' programs since 1982. The New York Stock Exchange and the National Association of Securities Dealers have both issued statements going back to 1989 regarding the importance of suspicious activity reporting to avoid money laundering charges. *See* the GAO Report at 22.

[8] See 31 CFR 103.18. The suspicious transaction reporting rules under the BSA for banking organizations previously appeared at 31 CFR 103.21 before that section was renumbered as 31 CFR 103.18. *See* 65 FR 13683, 13692 (March 14, 2000).

institution affiliates and subsidiaries of banks and bank holding companies (including broker-dealers), and to bank holding companies (including bank holding companies that are themselves broker-dealers).[9] The rule proposed today is intended to apply to all broker-dealers, without regard to whether they are affiliates or subsidiaries of banks or bank holding companies.[10]

Developing suspicious activity reporting rules appropriate to broker-dealers industry-wide involves taking into consideration many important issues. Appropriate suspicious transaction reporting by broker-dealers can provide significant information for criminal law enforcement, tax and regulatory authorities about potential criminal activity (as well as about previously undetected money laundering).

*E. Suspicious Transaction Reporting by Broker-Dealers—General Issues*

This notice of proposed rulemaking would generally require broker-dealers to report suspicious transactions to the Department of the Treasury. Several general issues cut across specific proposed provisions, and it may be helpful to note those issues at the outset.

1. *Definition of Broker-Dealer.* In light of the definition of ''broker or dealer in securities'' in 31 CFR 103.11(f), reporting would be required by any:

broker or dealer in securities, registered or required to be registered with the Securities Exchange Commission under the Securities Exchange Act of 1934.[11]

Insurance companies or their affiliates that are registered broker-dealers simply to permit the sale of variable annuities treated as securities under the Securities Exchange Act of 1934 would be subject, under the proposed rule, to suspicious transaction reporting obligations. This treatment represents a change from prior treatment of insurance companies required to register as broker-dealers in order to sell variable annuities. In 1972, Treasury exempted from the provisions of 31 CFR 103 persons required to register with the Securities and Exchange Commission as broker-dealers solely in order to offer and sell variable annuity contracts issued by life insurance companies. 37 FR 248986 (November 23, 1972). The exemption is inapplicable, however, if such a registered broker-dealer at any time offers and sells other types of securities in addition to variable annuities. FinCEN anticipates that this exemption will be withdrawn on the effective date of the final rule based on this notice of proposed rulemaking. Once the exemption is withdrawn, persons required to register as broker-dealers in order to offer and sell variable annuity contracts issued by life insurance companies will be required to comply with all applicable BSA requirements.

2. *Use of Suspicious Transaction Reports—Centralized Data Base.* As is the case with reporting by other categories of financial institutions subject to the Bank Secrecy Act, reports of suspicious activity made by broker-dealers under the proposed rule would be maintained in an automated data base containing information from all broker-dealer filings. The data base will permit rapid dissemination to appropriate agencies and self-regulatory organizations registered with the Securities and Exchange Commission of reports within their jurisdiction,[12] more thorough analysis and tracking of those reports, and, in time, the provision to the financial community of information about trends and patterns gleaned from the information reported, all as contemplated by the Congress.

## II. Specific Provisions

*A. 103.11(ii)—Transaction*

The definition of ''transaction'' in the Bank Secrecy Act regulations for purposes of suspicious transaction reporting conforms generally to the definition Congress added to 18 U.S.C. 1956 when it criminalized money laundering in 1986. *See* Public Law 99–570, Title XIII, 1352(a), 100 Stat. 3207–18 (Oct. 27, 1986). This notice proposes to amend that definition explicitly to include transactions involving any instrument that falls within the definition of ''security'' in section (3)(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10), and to add a corresponding definition of ''security'' to 31 CFR part 103. These changes are necessary so that the reporting rules will conform to the definition of broker or dealer in securities in 31 CFR 103.11(f) and cover all activity that should be reported under the proposed rule.

*B. 103.19—Reports of Suspicious Transactions*

*General.* Proposed section 103.19 contains the rules setting forth the obligation of broker-dealers to report suspicious transactions that are conducted or attempted by, at, or through a broker-dealer and involve or aggregate at least $5,000 in funds or other assets. It is important to recognize that transactions are reportable under this rule and 31 U.S.C. 5318(g) whether or not they involve currency.[13]

The obligation extends to transactions conducted or attempted by, at, or through, the broker-dealer. However, paragraph (a) also contains language designed to encourage the reporting of transactions that appear relevant to violations of law or regulation, even in cases in which the rule does not explicitly so require, for example in the case of a transaction falling below the $5,000 threshold in the rule.

Paragraph (a)(1) contains the general statement of the obligation to file. To clarify that the proposed rule creates a uniform reporting requirement for broker-dealers and banking organizations, the language of the reporting obligation incorporates language from suspicious activity reporting rules contained in both Title 12 and Title 31. Thus, the rule requires the reporting of all activity ''relevant to a possible violation of law or regulation,'' including ''any known or suspected violation of Federal law, or a suspicious transaction related to a money laundering activity or a violation of the Bank Secrecy Act''. It is anticipated that, when this proposed rule becomes effective, the federal bank

[9] For example, 12 CFR 225.4(f) subjects non-bank subsidiaries of bank holding companies to the suspicious transaction reporting requirements of Regulation H of the Board of Governors at 12 CFR 208.62. Broker-dealers to which the bank supervisory agency rules for suspicious transaction reporting currently apply represent approximately half of the business of the broker-dealer industry, though in terms of numbers, they are only a small percentage of the approximately 8,300 broker-dealers in the United States.

[10] Money transmitters, issuers, sellers, and redeemers of money orders, and issuers, sellers, and redeemers of traveler's checks will become subject to a similar reporting requirement pursuant to a final rule published in the **Federal Register** on March 14, 2000. *See* 31 CFR 103.20. Under that rule, reporting will be required for suspicious transactions involving or aggregating at least $2,000 in general or at least $5,000 in the case of issuers of money orders and traveler's checks to the extent the transactions to be reported are identified from a review of clearance records and similar documents. Finally, FinCEN has proposed a rule that would require casinos and card clubs to report suspicious transactions involving or aggregating at least $3,000. *See* 63 FR 27230 (May 18, 1998).

[11] The definitions of ''broker,'' ''dealer,'' and ''security,'' for purposes of the Securities Exchange Act of 1934 appear in sections 3(a)(4) (''broker''), 3(a)(5) (''dealer''), and 3(a)(10) (''security'') of that Act, 15 U.S.C. 78c(a)(4), (5), and (10).

[12] See 31 U.S.C. 5319, as amended by the USA Patriot Act.

[13] Many currency transactions are *not* indicative of money laundering or other violations of law, a fact recognized both by Congress, in authorizing reform of the currency transaction reporting system, and by FinCEN in issuing rules to implement that system (*See* 31 U.S.C. 5313(d) and 31 CFR 103.22(d), 63 FR 50147 (September 21, 1998)). But many non-currency transactions, (for example, funds transfers) *can* indicate illicit activity, especially in light of the breadth of the statutes that make money laundering a crime. *See* 18 U.S.C. 1956 and 1957.

supervisors will amend or repeal, as appropriate, any duplicative suspicious activity reporting requirements for broker-dealers.

Paragraph (a)(2) specifically describes two categories of transactions that require reporting. The first category, described in proposed paragraph (a)(2)(i), would require broker-dealers to report any known or suspected Federal criminal violation, committed or attempted against, or through, a broker-dealer. This language is intended to clarify the fact that broker-dealers must report all suspicious transactions that are relevant to a possible violation of law or regulation. Similar language appears in the suspicious activity reporting rules imposed by the federal bank supervisors under Title 12.

The second category of reportable transactions is contained in proposed paragraph (a)(2)(ii), which would require broker-dealers to report to the Treasury Department a transaction if the broker-dealer knows, suspects, or has reason to suspect that it is one of three classes of transactions (described more fully below) requiring reporting. The ''knows, suspects, or has reason to suspect'' standard incorporates a concept of due diligence in the reporting requirement.

The first class, described in proposed paragraph (a)(2)(ii)(A), includes transactions involving funds derived from illegal activity or intended or conducted in order to hide or disguise funds or assets derived from illegal activity. The second class, described in proposed paragraph (a)(2)(ii)(B), involves transactions designed, whether through structuring or other means, to evade the requirements of the Bank Secrecy Act. The third class, described in proposed paragraph (a)(2)(ii)(C), involves transactions that appear to serve no business or apparent lawful purpose, and for which the broker-dealer knows of no reasonable explanation after examining the available facts relating to the transaction and the parties.

It should be noted that the standard of reporting for the second reporting category differs from that of the first. Under the first reporting category, the broker-dealer must report ''known or suspected'' criminal activity. In contrast, the second category of reportable activity requires reporting if a broker-dealer ''knows, suspects, *or has reason to suspect*'' (emphasis added) that a transaction should be reported under the rule. The inclusion of two distinct reporting standards in the proposed rule is consistent with the suspicious activity reporting regime to which banking organizations are currently subject.[14]

A determination as to whether a report is required must be based on all the facts and circumstances relating to the transaction and customer of the broker-dealer in question. Different fact patterns will require different types of judgments. In some cases, the facts of the transaction may indicate the need to report. For example, frequent and large-scale usage of wire transfer facilities within a brokerage, with nominal or nonexistent securities purchases or sales may be indicative of suspicious activity. Similarly, the fact that a customer refuses to provide information necessary for the broker-dealer to make reports or keep records required by this Part or other regulations, provides information that a broker-dealer determines to be false, or seeks to change or cancel a transaction *after* such person is informed of currency transaction reporting or information verification or recordkeeping requirements relevant to the transaction would all indicate that a Suspicious Activity Report-BD (SAR–BD)[15] should be filed. (Of course, as the proposed rule makes clear, the broker-dealer may not notify the customer that it intends to file or has filed a suspicious transaction report with respect to the customer's activity.)

In other situations a more involved judgment may need to be made to determine whether a transaction is suspicious within the meaning of the rule. Transactions that raise the need for such judgments may include, for example, (i) transmission or receipt of funds transfers without normal identifying information or in a manner that indicates an attempt to disguise or hide the country of origin or destination or the identity of the customer sending the funds or of the beneficiary to whom the funds are sent; or (ii) repeated use of an account as a temporary resting place for funds from multiple sources without a clear business purpose therefor. The judgments involved will also extend to whether the facts and circumstances and the institution's knowledge of its customer provide a reasonable explanation for the transaction that removes it from the suspicious category.

31 U.S.C. 5318(g)(1) authorizes Treasury to require suspicious transaction reporting not only by financial institutions but by ''any director, officer, employee, or agent of any financial institution.'' This proposed rule addresses reporting by broker-dealers, but not by individual employees of a broker-dealer who are ''associated persons'' of that broker-dealer. FinCEN does not intend to reduce in any way the obligations of broker-dealer employees or agents, within the context of a broker-dealer's general regulatory or specific Bank Secrecy Act compliance programs, but simply to avoid at this time creating an obligation on the part of broker-dealer employees and agents *independent* of those general obligations.

The means of commerce and the techniques of money launderers are continually evolving, and there is no way to provide an exhaustive list of suspicious transactions. FinCEN hopes to continue its dialogue with the securities industry about the manner in which a combination of government guidance, training programs, and government-industry information exchange can smooth the way for operation of the new suspicious activity reporting system in as flexible and cost-efficient a way as possible.

*Reporting Threshold.* The proposed rule requires the reporting of suspicious transactions of at least $5,000.[16] FinCEN is aware of concern on the part of some broker-dealers that the threshold would operate mechanically to require broker-dealers to establish programs to examine every transaction occurring at the threshold level.[17] The suspicious transaction reporting rules, however, are not intended to operate (and indeed cannot properly operate) in a mechanical fashion. Rather, the suspicious transaction reporting requirements are intended to function in such a way as to have financial institutions evaluate customer activity

[14] *See, e.g.,* 12 CFR 208.62(c) and 31 CFR 103.18(a)(2).

[15] The term ''BD'' is an abbreviation for ''broker or dealer in securities'' and is used to distinguish the form from forms for reporting by other non-bank institutions.

[16] Broker-dealers covered by the bank supervisory rules for suspicious transaction reporting already comply with a $5,000 threshold for suspicious transactions relating to money laundering, BSA violations, and other criminal violations with respect to which a suspect can be identified. However, under those rules, a $25,000 reporting threshold applies to other criminal violations with respect to which a suspect cannot be identified. The proposed rule does not adopt this two-tiered approach.

[17] The GAO report includes information, based on a survey conducted by the GAO, regarding the average size of transactions for retail customers of broker-dealers. The report concludes that the average dollar size of individual transactions (those involving securities trades) was $22,306 (with $5,000 as the most frequent size transaction). The report cautions, however, that GAO was not able to develop meaningful estimates for the entire industry because of the low number of firms that provided information and the wide range of responses.

and relationships for money laundering risks.[18]

Section 352 of the USA Patriot Act will require broker-dealers to develop and implement programs designed to guard against money laundering.[19] FinCEN anticipates that these changes to section 5318 will be further addressed in a separate rulemaking prior to that date. Current securities self-regulatory organization rules will also require broker-dealers to have compliance programs for suspicious transaction reporting.[20] It is important to note however, that a risk-based approach to developing compliance procedures that can be reasonably expected to promote the detection and reporting of suspicious activity should be the focus of a broker-dealer's anti-money laundering compliance program. A compliance program that captures for review only those transactions that are above a threshold set at a mechanically high level, regardless of the money laundering or other risks such transactions may involve, and regardless of the money laundering or other risks that transactions at a lower dollar threshold may involve, would likely not be a satisfactory program. Of course, the particular contents or size of a compliance program must vary, as it does at banking organizations, to reflect the size and nature of a particular broker-dealer's operations.

*Filing Procedures.* Paragraph (b) sets forth the filing procedures to be followed by broker-dealers making reports of suspicious transactions. Within 30 days after a broker-dealer becomes aware of a suspicious transaction, the business must report the transaction by completing a SAR–BD and filing it in a central location, to be determined by FinCEN. The SAR–BD will resemble the SAR used by banks to report suspicious transactions, and a draft form will be made available for comment by publication in the **Federal Register**.

Supporting documentation relating to each SAR–BD is to be collected and maintained separately by the broker-dealer and made available to law enforcement, regulatory agencies, and SROs as permitted in paragraph (g) of the rule, upon request. Special provision is made for situations requiring immediate attention, in which case broker-dealers are to telephone the appropriate law enforcement authority and the SEC in addition to filing a SAR–BD.

*Exceptions.* The proposed rule would create two exceptions from reporting. The first exception deals with the reporting of lost, stolen, missing or counterfeit securities; that reporting is to occur in accordance with existing Securities and Exchange Commission rules. The second exception permits the reporting of a violation of federal securities laws (or rules of an appropriate SRO) by an employee or other registered representative of a broker-dealer, under existing industry procedures rather than through a SAR–BD. The second exception does not apply, however, if the securities law or SRO rule violation is a possible violation of 17 CFR 240.17a–8 or 17 CFR 405.4. These exceptions are designed to permit the reporting of those potential violations according to present procedures and modes in the securities industry.

*Retention of Records.* Paragraph (d) provides that filing broker-dealers must maintain copies of SAR–BDs and the original related documentation for a period of five years from the date of filing. As indicated above, supporting documentation is to be made available to FinCEN, the SEC, other appropriate law enforcement and regulatory authorities, and, as explained below, to SROs as permitted in paragraph (g) of the rule, on request.

*Non-Disclosure.* Paragraph (e) reflects the statutory bar against the disclosure of information filed in, or the fact of filing, a suspicious activity report (whether the report is required by the proposed rule or is filed voluntarily). *See* 31 U.S.C. 5318(g)(2) and 31 CFR 103.18(e)(for depository institutions). Thus, the paragraph specifically prohibits persons filing SAR–BDs from making any disclosure, except to law enforcement and regulatory agencies, and, as explained below, to SROs as permitted in paragraph (g) of the rule, about either the reports themselves or supporting documentation.

*Safe Harbor from Civil Liability.* 31 U.S.C. 5318(g), as amended by the USA Patriot Act, provides protection from liability for making reports of suspicious transactions, and for failures to disclose the fact of such reporting, contained in 31 U.S.C. 5318(g), as amended by the USA Patriot Act. Section 351 of that Act clarifies that the safe harbor applies to the voluntary reporting of suspicious transactions, and the proposed rule reflects this clarification.

The USA Patriot Act clarifies that the safe harbor is available in the arbitration of securities industry disputes. In this regard, FinCEN recognizes that disputes between broker-dealers and their customers most typically are resolved through arbitration. It is therefore anticipated that disputes arising out of suspicious transaction reporting by broker-dealers generally will be resolved through arbitration.

The safe harbor provision of 31 U.S.C. 5318(g) clearly protects any financial institution from civil liability for reporting suspicious activity.[21] While the applicable law in this area is unambiguous, FinCEN understands that arbitration, unlike litigation, is an equitable forum where the decision makers have some degree of flexibility in resolving the disputes before them. FinCEN further understands that, as a practical matter, it may be difficult to overturn an arbitration award, even where an arbitrator did not correctly apply the law.

The specific reference to arbitration in the safe harbor provision of the proposed rule clarifies that the mere switch in venue from the courts to arbitration for many securities industry disputes does not alter the effect of the safe harbor from liability for suspicious transaction reporting. In doing so, the proposed rule reflects the recent amendment to section 5318(g) by the USA Patriot Act, which clarifies that the safe harbor for suspicious transaction reporting shall apply in arbitration. Section 351 of the USA Patriot Act states that a financial institution that reports suspicious activity shall not be

[18] Thus, for example, transactions involving securities trades by the pension fund of a publicly traded corporation, even though involving a large dollar amount, would likely require a more limited scrutiny than less typical transactions such as those involving customers who wish to deposit currency in their brokerage account or to open a brokerage account using money orders even though the dollar amounts in those latter cases may be relatively small.

[19] *See* 31 U.S.C. 5318(h). Section 312 of that Act amends section 5318 by adding a new paragraph (i) requiring financial institutions to establish enhanced due diligence procedures for certain private banking accounts and correspondent accounts, including reasonable steps to guard against money laundering and report suspicious activity involving these accounts.

[20] Existing securities law and self-regulatory organization rules will ensure that broker-dealers have suspicious activity reporting rule compliance programs in place. In particular, Section 19(g) of the Exchange Act provides that "Every self-regulatory organization shall comply with the provisions of this title, the rules and regulations thereunder, and its own rules, and . . . absent reasonable justification or excuse enforce compliance." To give effect to Section 19(g), both the National Association of Securities Dealers and the New York Stock Exchange promulgated compliance program rules. *See* NASD Rule 3010 and NYSE Rule 342, including Supplemental Material .30. Rule 17a–8 of the Exchange Act requires broker-dealers to comply with applicable BSA rules. Accordingly, broker-dealers will be required under existing rules to develop compliance programs for the broker-dealer SAR rule proposed in this document.

[21] *See Lee* v. *Bankers Trust Co.,* 166 F.3d 540, 544 (2nd Cir. 1999) (stating that in enacting 31 U.S.C. 5318(g), the Congress "broadly and unambiguously provide[d] * * * immunity from any law (except the federal Constitution) for any statement made in a SAR by anyone connected to a financial institution").

liable for filing such a report ''under any law or regulation of the United States, any constitution, law or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (*including any arbitration agreement*).'' (Emphasis added.) FinCEN intends to work with the SEC, SROs, and industry representatives to ensure that appropriate educational materials are delivered to compliance and litigation personnel.

It must be noted that, while the proposed rule reiterates and clarifies the broad protection from liability for making reports of suspicious transactions and for failures to disclose the fact of such reporting, contained in the statutory safe harbor provision, the regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection. Inclusion of safe harbor language in the proposal is in no way intended to suggest that the safe harbor can override the non-disclosure provisions of the law and regulations. The prohibition on disclosure (other than as required by the proposed rule) applies regardless of any protection from liability. This means, for example, that during an arbitration proceeding, a broker-dealer cannot give a SAR–BD, or disclose that one was filed, to any participant in the proceeding, including the arbitrator.

*Examination and Enforcement*. Paragraph (g) notes that compliance with the obligation to report suspicious transactions will be examined, and provides that failure to comply with the rule may constitute a violation of the Bank Secrecy Act and the Bank Secrecy Act regulations. This paragraph also makes clear that a broker-dealer must provide access to SAR–BDs that the broker-dealer has filed pursuant to this requirement, to SROs registered with the Securities and Exchange Commission that have jurisdiction to examine a broker-dealer for compliance with this rule. In examining any particular failure to report a transaction as required by this section, FinCEN and the SEC may take into account the relationship between the particular failure to report and the adequacy of the implementation and operation of a broker-dealer's compliance procedures.

*Proposed Effective Date*. Finally, paragraph (h) provides that the new suspicious activity reporting rule would be effective 180 days after the date on which the final regulations to which this notice of proposed rulemaking relates are published in the **Federal Register**.

## III. Submission of Comments

An original and four copies of any written hard copy comment (but not of comments sent via E-Mail), must be submitted. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

## IV. Regulatory Flexibility Act

FinCEN certifies that this proposed regulation would not have a significant economic impact on a substantial number of small entities. All broker-dealers, regardless of their size, are currently subject to the Bank Secrecy Act. Procedures currently in place at broker-dealers to comply with existing Bank Secrecy Act rules should help broker-dealers identity suspicious transactions. In addition, the limited use of currency in the broker-dealer industry will likely reduce the number of suspicious activity reports required to be filed. Finally, certain small broker-dealers may have an established and limited customer base whose transactions are well-known to the broker dealer.

## V. Executive Order 12866

The Department of the Treasury has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

## VI. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this proposal provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

## VII. Paperwork Reduction Act

*Recordkeeping Requirements of 31 CFR 103.20*. The collection of information contained in this notice of proposed rulemaking is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503, with copies to FinCEN at Department of the Treasury, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, Virginia 22183. Comments on the collection of information should be received by March 1, 2002. In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 103.19 is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that this proposed rule, if adopted as proposed, would result in the annual filing of a total of 2,000 Suspicious Activity Report-BD forms. This result is an estimate extrapolated from the number of suspicious activity reports currently being filed by the broker-dealer industry either on a mandatory basis under the bank supervisory agency rules or voluntarily.

*Description of Respondents:* Brokers or dealers in securities registered or required to be registered with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934.

*Estimated Number of Respondents:* 8,300.

*Frequency:* As required.

*Estimate of Burden:* The reporting burden of 31 CFR 103.19 will be reflected in the burden of the form, Suspicious Activity Report-BD. The recordkeeping burden of 31 CFR 103.19 is estimated as an average of 3 hours per form, which includes internal review of records to determine whether the activity requires reporting.

*Estimate of Total Annual Recordkeeping Burden on Respondents:* Recordkeeping burden estimate = 6,000 hours.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

**List of Subjects in 31 CFR Part 103**

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

For the reasons set forth above in the preamble, 31 CFR Part 103 is proposed to be amended as follows:

## PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. In § 103.11, paragraph (ii)(1) is revised and new paragraph (ww) is added to read as follows:

### § 103.11 Meaning of terms.

* * * * *

(ii) *Transaction.* (1) Except as provided in paragraph (ii)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or security, purchase or redemption of any money order, payment or order for any money remittance or transfer, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

* * * * *

(ww) *Security.* Security means any instrument or interest described in section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10).

3. In Subpart B, add new § 103.19 to read as follows:

### § 103.19 Reports by brokers or dealers in securities of suspicious transactions.

(a) *General.* (1) Every broker or dealer in securities (for purposes of this section, a ''broker-dealer'') shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. This includes any known or suspected violation of Federal law, or a suspicious transaction related to a money laundering violation or a violation of the Bank Secrecy Act. A broker-dealer may also file with the Treasury Department a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section. A voluntary filing does not relieve a broker-dealer from the responsibility of complying with any other reporting requirements imposed by the Securities and Exchange Commission or a self-regulatory organization (''SRO'') (as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26)).

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a broker-dealer, it involves or aggregates funds or other assets of at least $5,000, and:

(i) The broker-dealer detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the broker-dealer or involving a transaction or transactions conducted through the broker-dealer, where the broker-dealer was either an actual or potential victim of a criminal violation, or series of criminal violations or that the broker-dealer was used to facilitate a criminal transaction. (If it is determined prior to filing this report that the identified suspect or group of suspects has used an ''alias,'' then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as drivers' licenses or social security numbers, addresses and telephone numbers, must be reported); or

(ii) the broker-dealer knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(A) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(B) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330; or

(C) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report—Brokers or Dealers in Securities(''SAR-BD''), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR–BD shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR–BD.

(3) *When to file.* A SAR–BD shall be filed no later than 30 calendar days after the date of the initial detection by the reporting broker-dealer of facts that may constitute a basis for filing a SAR–BD under this section. If no suspect is identified on the date of such initial detection, a broker-dealer may delay filing a SAR–BD for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the broker-dealer shall immediately notify by telephone an appropriate law enforcement authority and the Securities and Exchange Commission in addition to filing a SAR–BD.

(c) *Exceptions.* (1) A broker-dealer is not required to file a SAR–BD to report:

(i) Lost, missing, counterfeit, or stolen securities with respect to which it files a report pursuant to the reporting requirements of 17 CFR 240.17f–1; or

(ii) A possible violation of any of the federal securities laws or rules of a self-regulatory organization (''SRO'') (as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26)), by the broker-dealer or any of its officers, directors, employees or other registered representatives, other than a possible violation of 17 CFR 240.17a–8 or 17 CFR 405.4, so long as such violation is appropriately reported to the Securities and Exchange Commission or an SRO.

(2) A broker-dealer may be required to demonstrate that it has relied on an exception in paragraph (c)(1)(ii) of this section, and must maintain records of its determinations to do so for the period specified in paragraph (d) of this section. To the extent that a Form RE–3, Form U–4, or Form U–5 concerning the transaction is filed consistent with the self-regulatory organization rules, a copy of that form will be a sufficient record for purposes of this paragraph (c)(2).

(3) For the purposes of this paragraph (c) the term ''federal securities laws'' means the ''securities laws,'' as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47), and the rules and regulations promulgated by the Securities and Exchange Commission under such laws.

(d) *Retention of records.* A broker-dealer shall maintain a copy of any SAR–BD filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–BD. Supporting documentation shall be identified as such and maintained by the broker-dealer, and shall be deemed to have been filed with the SAR–BD. A broker-dealer shall make all supporting documentation available to FinCEN, any other appropriate law enforcement agencies or federal or state securities regulators, and an SRO registered with the Securities and Exchange Commission in accordance with paragraph (g) of this section, upon request.

(e) *Confidentiality of reports.* No financial institution, and no director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SAR–BD or the information contained in a SAR–BD, except where such disclosure is requested by FinCEN, the Securities and Exchange Commission, or another appropriate law enforcement or regulatory agency, or an SRO registered with the Securities and Exchange Commission in accordance with paragraph (g) of this section, shall decline to produce the SAR–BD or to provide any information that would disclose that a SAR–BD has been prepared or filed, citing this paragraph and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto.

(f) *Limitation of liability.* A broker-dealer, and any director, officer, employee, or agent of such broker-dealer, that makes a report of any possible violation of law or regulation pursuant to this section or any other authority (or voluntarily) shall not be liable to any person under any law or regulation of the United States (or otherwise to the extent also provided in 31 U.S.C. 5318(g)(3), including in any arbitration proceeding) for any disclosure contained in, or for failure to disclose the fact of, such report.

(g) *Examination and enforcement.* Compliance with this section shall be examined by the Department of the Treasury, through FinCEN or its delegees under the terms of the Bank Secrecy Act. Reports filed under this section shall be made available to an SRO registered with the Securities and Exchange Commission examining a broker-dealer for compliance with the requirements of this section. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(h) *Effective date.* This section is effective [date that is 180 days after the date on which the final regulation to which this notice of proposed rulemaking relates is published in the **Federal Register**].

Dated: December 20, 2001.

**James F. Sloan,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 01–31850 Filed 12–28–01; 8:45 am]

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Federal Register

Monday,
December 31, 2001

# Part VI

# Department of the Treasury

## Internal Revenue Service

**26 CFR Part 1**

**31 CFR Part 103**

**Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement that Nonfinancial Trades or Businesses Report Certain Currency Transactions; Interim Rule, Final and Proposed Rules**

**DEPARTMENT OF THE TREASURY**

**31 CFR Part 103**

**RIN 1506–AA25**

## Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement That Nonfinancial Trades or Businesses Report Certain Currency Transactions

**AGENCY:** Financial Crimes Enforcement Network (''FinCEN''), Treasury.

**ACTION:** Interim rule.

**SUMMARY:** This document contains an interim rule amending the Bank Secrecy Act regulations to require that persons who, in the course of conducting a nonfinancial trade or business, receive more than $10,000 in coins or currency in one transaction (or two or more related transactions), file a report of such transaction with the Treasury Department.

**DATES:** This interim rule is effective as of January 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Cynthia L. Clark, Deputy Chief Counsel, or Laurence J. Levine, Attorney-Advisor, Office of Chief Counsel, FinCEN, (703) 905–3590.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

This document adds, as an interim rule, a new section 31 CFR 103.30. The Interim Rule is adopted to implement the terms of 31 U.S.C. 5331, which was added to the Bank Secrecy Act by section 365 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Public Law 107–56 (October 26, 2001).

### II. Statutory Provisions

The Bank Secrecy Act, Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311, *et seq.*, authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311, *et seq.*), appear at 31 CFR Part 103. The authority of the Secretary to administer Title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

Under 31 U.S.C. 5331, any person who is engaged in a trade or business and who, in the course of such trade or business, receives more than $10,000 in coins or currency in one transaction (or two or more related transactions) is required to file a report with respect to such transaction (or related transactions) with the Treasury Department. Reporting under section 5331 does not apply to amounts received in a transaction reported under 31 U.S.C. 5313 and the accompanying regulations.

For purposes of section 5331, currency includes foreign currency, and to the extent provided in regulations, any monetary instrument, whether or not in bearer form, with a face amount of not more than $10,000. Such monetary instruments shall not include any check drawn on the account of the writer in a financial institution referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), or (S) of 31 U.S.C. 5312 (a)(2).

Reports required under section 5331 must be in such form as the Secretary may prescribe. The reports must contain: (1) the name, address, and such other identification information as the Secretary may require, of the person from whom the coins or currency was received; (2) the amount of coins or currency received; (3) the date and nature of the transaction; and (4) such other information, including the identification of the person filing the report, as the Secretary may prescribe.

### III. Interim Rule

With a minor exception, section 5331 requires reporting of the same transaction that must be reported to the Internal Revenue Service (''IRS'') under section 6050I of title 26, United States Code, and 26 CFR 1.6050I–1. Section 5331 does not require reporting of currency received by clerks of court. *Cf.* 26 U.S.C. 6050I(g). Further, section 5331 does not require the person making a report under section 5331 to furnish to the person whose name is required to be set forth on the report a statement concerning the report. *Cf.* 26 U.S.C. 6050I(e).

Because section 5331 is substantially similar to 26 U.S.C. 6050I, the Interim Rule provides that persons required to report a transaction under section 5331 must make that report by filing a joint FinCEN/IRS form with the IRS. Under this dual-reporting regime, only one form is required to be filed for a transaction subject to both section 5331 and section 6050I of title 26. Thus, the Interim Rule imposes no new reporting or record-keeping burden on persons required to report certain transactions under section 5331.

Because of the similarity between the provisions, FinCEN believes it is appropriate for the Interim Rule to adopt the same rules for multiple payments, monetary instruments, and designated reporting transactions as appear in the regulations under section 6050I. Thus, for example, the Interim Rule requires that recipients aggregate an initial payment and subsequent payments such that a report is required if the aggregation exceeds $10,000 within one year of the initial payment. In addition, the Interim Rule, like 26 CFR 1.6050I–1, includes within the definition of currency monetary instruments such as cashiers' checks, bank drafts, traveler's checks or money orders, not having a face amount of more than $10,000, when such monetary instruments are received in a ''designated reporting transaction,'' i.e., certain retail sales as defined in the regulation.

### IV. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this Interim Rule because FinCEN was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

### V. Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and approved by the Office of Management and Budget (OMB) under control number 1506–0018. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

To submit comments concerning the collection of information described in this Interim Rule, please refer to the companion Notice of Proposed Rulemaking published elsewhere in this issue of the **Federal Register**.

[1] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the USA PATRIOT Act of 2001.

## VI. Executive Order 12866

The Department of the Treasury has determined that this Interim Rule is not a significant regulatory action under Executive Order 12866.

## VII. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this proposal provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

## VIII. Administrative Procedure Act

Because the Interim Rule implements the statute, imposes no additional burden on the public, and addresses the collection of records that may be integral in ongoing antiterrorism and other criminal and regulatory investigations or proceedings, it is found to be impracticable, unnecessary, and contrary to the public interest to comply with notice and public procedure under 5 U.S.C. 553(b). For these reasons, the Interim Rule is made effective before 30 days have passed after its publication date. *See* 5 U.S.C. 553(d).

## List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

## Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR Part 103 is amended as follows:

## PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5331.

2. A new § 103.30 is added to subpart B to read as follows:

### § 103.30 Reports relating to currency in excess of $10,000 received in a trade or business.

(a) *Reporting requirement*—(1) *Reportable transactions*—(i) *In general.* Any person (solely for purposes of section 5331 of title 31, United States Code and this section, ''person'' shall have the same meaning as under 26 U.S.C. 7701 (a)(1)) who, in the course of a trade or business in which such person is engaged, receives currency in excess of $10,000 in 1 transaction (or 2 or more related transactions) shall, except as otherwise provided, make a report of information with respect to the receipt of currency. This section does not apply to amounts received in a transaction reported under 31 U.S.C. 5313 and § 103.22.

(ii) *Certain financial transactions.* Section 6050I of title 26 of the United States Code requires persons to report information about financial transactions to the IRS, and 31 U.S.C. 5331 requires persons to report similar information about certain transactions to the Financial Crimes Enforcement Network. This information shall be reported on the same form as prescribed by the Secretary.

(2) *Currency received for the account of another.* Currency in excess of $10,000 received by a person for the account of another must be reported under this section. Thus, for example, a person who collects delinquent accounts receivable for an automobile dealer must report with respect to the receipt of currency in excess of $10,000 from the collection of a particular account even though the proceeds of the collection are credited to the account of the automobile dealer (*i.e.,* where the rights to the proceeds from the account are retained by the automobile dealer and the collection is made on a fee-for-service basis).

(3) *Currency received by agents*—(i) *General rule.* Except as provided in paragraph (a)(3)(ii) of this section, a person who in the course of a trade or business acts as an agent (or in some other similar capacity) and receives currency in excess of $10,000 from a principal must report the receipt of currency under this section.

(ii) *Exception.* An agent who receives currency from a principal and uses all of the currency within 15 days in a currency transaction (the ''second currency transaction'') which is reportable under section 5312 of title 31, or 31 U.S.C. 5331 and this section, and who discloses the name, address, and taxpayer identification number of the principal to the recipient in the second currency transaction need not report the initial receipt of currency under this section. An agent will be deemed to have met the disclosure requirements of this paragraph (a)(3)(ii) if the agent discloses only the name of the principal and the agent knows that the recipient has the principal's address and taxpayer identification number.

(iii) *Example.* The following example illustrates the application of the rules in paragraphs (a)(3)(i) and (ii) of this section:

*Example.* B, the principal, gives D, an attorney, $75,000 in currency to purchase real property on behalf of B. Within 15 days D purchases real property for currency from E, a real estate developer, and discloses to E, B's name, address, and taxpayer identification number. Because the transaction qualifies for the exception provided in paragraph (a)(3)(ii) of this section, D need not report with respect to the initial receipt of currency under this section. The exception does not apply, however, if D pays E by means other than currency, or effects the purchase more than 15 days following receipt of the currency from B, or fails to disclose B's name, address, and taxpayer identification number (assuming D does not know that E already has B's address and taxpayer identification number), or purchases the property from a person whose sale of the property is not in the course of that person's trade or business. In any such case, D is required to report the receipt of currency from B under this section.

(b) *Multiple payments.* The receipt of multiple currency deposits or currency installment payments (or other similar payments or prepayments) relating to a single transaction (or two or more related transactions), is reported as set forth in paragraphs (b)(1) through (b)(3) of this section.

(1) *Initial payment in excess of $10,000.* If the initial payment exceeds $10,000, the recipient must report the initial payment within 15 days of its receipt.

(2) *Initial payment of $10,000 or less.* If the initial payment does not exceed $10,000, the recipient must aggregate the initial payment and subsequent payments made within one year of the initial payment until the aggregate amount exceeds $10,000, and report with respect to the aggregate amount within 15 days after receiving the payment that causes the aggregate amount to exceed $10,000.

(3) *Subsequent payments.* In addition to any other required report, a report must be made each time that previously unreportable payments made within a 12-month period with respect to a single transaction (or two or more related transactions), individually or in the

aggregate, exceed $10,000. The report must be made within 15 days after receiving the payment in excess of $10,000 or the payment that causes the aggregate amount received in the 12-month period to exceed $10,000. (If more than one report would otherwise be required for multiple currency payments within a 15-day period that relate to a single transaction (or two or more related transactions), the recipient may make a single combined report with respect to the payments. The combined report must be made no later than the date by which the first of the separate reports would otherwise be required to be made.)

(4) *Example.* The following example illustrates the application of the rules in paragraphs (b)(1) through (b)(3) of this section:

*Example.* On January 10, Year 1, M receives an initial payment in currency of $11,000 with respect to a transaction. M receives subsequent payments in currency with respect to the same transaction of $4,000 on February 15, Year 1, $6,000 on March 20, Year 1, and $12,000 on May 15, Year 1. M must make a report with respect to the payment received on January 10, Year 1, by January 25, Year 1. M must also make a report with respect to the payments totaling $22,000 received from February 15, Year 1, through May 15, Year 1. This report must be made by May 30, Year 1, that is, within 15 days of the date that the subsequent payments, all of which were received within a 12-month period, exceeded $10,000.

(c) *Meaning of terms.* The following definitions apply for purposes of this section—

(1) *Currency.* Solely for purposes of 31 U.S.C. 5331 and this section, *currency* means—

(i) The coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued; and

(ii) A cashier's check (by whatever name called, including ''treasurer's check'' and ''bank check''), bank draft, traveler's check, or money order having a face amount of not more than $10,000—

(A) Received in a designated reporting transaction as defined in paragraph (c)(2) of this section (except as provided in paragraphs (c)(3), (4), and (5) of this section), or

(B) Received in any transaction in which the recipient knows that such instrument is being used in an attempt to avoid the reporting of the transaction under section 5331 and this section.

(2) *Designated reporting transaction.* A designated reporting transaction is a retail sale (or the receipt of funds by a broker or other intermediary in connection with a retail sale) of—

(i) A consumer durable, (ii) A collectible, or

(iii) A travel or entertainment activity.

(3) *Exception for certain loans.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument constitutes the proceeds of a loan from a bank. The recipient may rely on a copy of the loan document, a written statement from the bank, or similar documentation (such as a written lien instruction from the issuer of the instrument) to substantiate that the instrument constitutes loan proceeds.

(4) *Exception for certain installment sales.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument is received in payment on a promissory note or an installment sales contract (including a lease that is considered to be a sale for Federal income tax purposes). However, the preceding sentence applies only if—

(i) Promissory notes or installment sales contracts with the same or substantially similar terms are used in the ordinary course of the recipient's trade or business in connection with sales to ultimate consumers; and

(ii) The total amount of payments with respect to the sale that are received on or before the 60th day after the date of the sale does not exceed 50 percent of the purchase price of the sale.

(5) *Exception for certain down payment plans.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument is received pursuant to a payment plan requiring one or more down payments and the payment of the balance of the purchase price by a date no later than the date of the sale (in the case of an item of travel or entertainment, a date no later than the earliest date that any item of travel or entertainment pertaining to the same trip or event is furnished). However, the preceding sentence applies only if—

(i) The recipient uses payment plans with the same or substantially similar terms in the ordinary course of its trade or business in connection with sales to ultimate consumers; and

(ii) The instrument is received more than 60 days prior to the date of the sale (in the case of an item of travel or entertainment, the date on which the final payment is due).

(6) *Examples.* The following examples illustrate the definition of ''currency'' set forth in paragraphs (c)(l) through (c)(5) of this section:

*Example 1.* D, an individual, purchases gold coins from M, a coin dealer, for $13,200. D tenders to M in payment United States currency in the amount of $6,200 and a cashier's check in the face amount of $7,000 which D had purchased. Because the sale is a designated reporting transaction, the cashier's check is treated as currency for purposes of 31 U.S.C. 5331 and this section. Therefore, because M has received more than $10,000 in currency with respect to the transaction, M must make the report required by 31 U.S.C. 5331 and this section.

*Example 2.* E, an individual, purchases an automobile from Q, an automobile dealer, for $11,500. E tenders to Q in payment United States currency in the amount of $2,000 and a cashier's check payable to E and Q in the amount of $9,500. The cashier's check constitutes the proceeds of a loan from the bank issuing the check. The origin of the proceeds is evident from provisions inserted by the bank on the check that instruct the dealer to cause a lien to be placed on the vehicle as security for the loan. The sale of the automobile is a designated reporting transaction. However, under paragraph (c)(3) of this section, because E has furnished Q documentary information establishing that the cashier's check constitutes the proceeds of a loan from the bank issuing the check, the cashier's check is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section.

*Example 3.* F, an individual, purchases an item of jewelry from S, a retail jeweler, for $12,000. F gives S traveler's checks totaling $2,400 and pays the balance with a personal check payable to S in the amount of $9,600. Because the sale is a designated reporting transaction, the traveler's checks are treated as currency for purposes of section 5331 and this section. However, because the personal check is not treated as currency for purposes of section 5331 and this section, S has not received more than $10,000 in currency in the transaction and no report is required to be filed under section 5331 and this section.

*Example 4.* G, an individual, purchases a boat from T, a boat dealer, for $16,500. G pays T with a cashier's check payable to T in the amount of $16,500. The cashier's check is not treated as currency because the face amount of the check is more than $10,000. Thus, no report is required to be made by T under section 5331 and this section.

*Example 5.* H, an individual, arranges with W, a travel agent, for the chartering of a passenger aircraft to transport a group of individuals to a sports event in another city. H also arranges with W for hotel accommodations for the group and for admission tickets to the sports event. In payment, H tenders to W money orders which H had previously purchased. The total amount of the money orders, none of which individually exceeds $10,000 in face amount, exceeds $10,000. Because the transaction is a designated reporting transaction, the money orders are treated as currency for purposes of

section 5331 and this section. Therefore, because W has received more than $10,000 in currency with respect to the transaction, W must make the report required by section 5331 and this section.

(7) *Consumer durable.* The term *consumer* durable means an item of tangible personal property of a type that is suitable under ordinary usage for personal consumption or use, that can reasonably be expected to be useful for at least 1 year under ordinary usage, and that has a sales price of more than $10,000. Thus, for example, a $20,000 automobile is a consumer durable (whether or not it is sold for business use), but a $20,000 dump truck or a $20,000 factory machine is not.

(8) *Collectible.* The term collectible means an item described in paragraphs (A) through (D) of section 408 (m)(2) of title 26 of the United States Code (determined without regard to section 408 (m)(3) of title 26 of the United States Code).

(9) *Travel or entertainment activity.* The term *travel or entertainment activity* means an item of travel or entertainment (within the meaning of 26 CFR 1.274–2(b)(1)) pertaining to a single trip or event where the aggregate sales price of the item and all other items pertaining to the same trip or event that are sold in the same transaction (or related transactions) exceeds $10,000.

(10) *Retail sale.* The term *retail sale* means any sale (whether for resale or for any other purpose) made in the course of a trade or business if that trade or business principally consists of making sales to ultimate consumers.

(11) *Trade or business.* The term trade or business has the same meaning as under section 162 of title 26, United States Code.

(12) *Transaction.* (i) Solely for purposes of 31 U.S.C. 5331 and this section, the term *transaction* means the underlying event precipitating the payer's transfer of currency to the recipient. In this context, transactions include (but are not limited to) a sale of goods or services; a sale of real property; a sale of intangible property; a rental of real or personal property; an exchange of currency for other currency; the establishment or maintenance of or contribution to a custodial, trust, or escrow arrangement; a payment of a preexisting debt; a conversion of currency to a negotiable instrument; a reimbursement for expenses paid; or the making or repayment of a loan. A transaction may not be divided into multiple transactions in order to avoid reporting under this section.

(ii) The term *related transactions* means any transaction conducted between a payer (or its agent) and a recipient of currency in a 24-hour period. Additionally, transactions conducted between a payer (or its agent) and a currency recipient during a period of more than 24 hours are related if the recipient knows or has reason to know that each transaction is one of a series of connected transactions.

(iii) The following examples illustrate the definition of paragraphs (c)(12) (i) and (ii) of this section:

*Example 1.* A person has a tacit agreement with a gold dealer to purchase $36,000 in gold bullion. The $36,000 purchase represents a single transaction under paragraph (c)(12)(i) of this section and the reporting requirements of this section cannot be avoided by recasting the single sales transaction into 4 separate $9,000 sales transactions.

*Example 2.* An attorney agrees to represent a client in a criminal case with the attorney's fee to be determined on an hourly basis. In the first month in which the attorney represents the client, the bill for the attorney's services comes to $8,000 which the client pays in currency. In the second month in which the attorney represents the client, the bill for the attorney's services comes to $4,000, which the client again pays in currency. The aggregate amount of currency paid ($12,000) relates to a single transaction as defined in paragraph (c)(12)(i) of this section, the sale of legal services relating to the criminal case, and the receipt of currency must be reported under this section.

*Example 3.* A person intends to contribute a total of $45,000 to a trust fund, and the trustee of the fund knows or has reason to know of that intention. The $45,000 contribution is a single transaction under paragraph (c)(12)(i) of this section and the reporting requirement of this section cannot be avoided by the grantor's making five separate $9,000 contributions of currency to a single fund or by making five $9,000 contributions of currency to five separate funds administered by a common trustee.

*Example 4.* K, an individual, attends a one day auction and purchases for currency two items, at a cost of $9,240 and $1,732.50 respectively (tax and buyer's premium included). Because the transactions are related transactions as defined in paragraph (c)(12)(ii) of this section, the auction house is required to report the aggregate amount of currency received from the related sales ($10,972.50), even though the auction house accounts separately on its books for each item sold and presents the purchaser with separate bills for each item purchased.

*Example 5.* F, a coin dealer, sells for currency $9,000 worth of gold coins to an individual on three successive days. Under paragraph (c)(12)(ii) of this section the three $9,000 transactions are related transactions aggregating $27,000 if F knows, or has reason to know, that each transaction is one of a series of connected transactions.

(13) *Recipient.* (i) The term *recipient* means the person receiving the currency. Except as provided in paragraph (c)(13)(ii) of this section, each store, division, branch, department, headquarters, or office (''branch'') (regardless of physical location) comprising a portion of a person's trade or business shall for purposes of this section be deemed a separate recipient.

(ii) A branch that receives currency payments will not be deemed a separate recipient if the branch (or a central unit linking such branch with other branches) would in the ordinary course of business have reason to know the identity of payers making currency payments to other branches of such person.

(iii) *Examples.* The following examples illustrate the application of the rules in paragraphs (c)(13)(i) and (ii) of this section:

*Example 1.* N, an individual, purchases regulated futures contracts at a cost of $7,500 and $5,000, respectively, through two different branches of Commodities Broker X on the same day. N pays for each purchase with currency. Each branch of Commodities Broker X transmits the sales information regarding each of N's purchases to a central unit of Commodities Broker X (which settles the transactions against N's account). Under paragraph (c)(13)(ii) of this section the separate branches of Commodities Broker X are not deemed to be separate recipients; therefore, Commodities Broker X must report with respect to the two related regulated futures contracts sales in accordance with this section.

*Example 2.* P, a corporation, owns and operates a racetrack. P's racetrack contains 100 betting windows at which pari-mutuel wagers may be made. R, an individual, places currency wagers of $3,000 each at five separate betting windows. Assuming that in the ordinary course of business each betting window (or a central unit linking windows) does not have reason to know the identity of persons making wagers at other betting windows, each betting window would be deemed to be a separate currency recipient under paragraph (c)(13)(i) of this section. As no individual recipient received currency in excess of $10,000, no report need be made by P under this section.

(d) *Exceptions to the reporting requirements of 31 U.S.C. 5331—(1) Receipt of currency by certain casinos having gross annual gaming revenue in excess of $1,000,000*—(i) *In general.* If a casino receives currency in excess of $10,000 and is required to report the receipt of such currency directly to the Treasury Department under §§ 103.22 (a)(2) and 103.25 and is subject to the recordkeeping requirements of § 103.36, then the casino is not required to make a report with respect to the receipt of such currency under 31 U.S.C. 5331 and this section.

(ii) *Casinos exempt under § 103.55(c).* Pursuant to § 103.55, the Secretary may exempt from the reporting and recordkeeping requirements under §§ 103.22, 103.25 and 103.36 casinos in

any state whose regulatory system substantially meets the reporting and recordkeeping requirements of this part. Such casinos shall not be required to report receipt of currency under 31 U.S.C. 5331 and this section.

(iii) *Reporting of currency received in a nongaming business.* Nongaming businesses (such as shops, restaurants, entertainment, and hotels) at casino hotels and resorts are separate trades or businesses in which the receipt of currency in excess of $10,000 is reportable under section 5331 and these regulations. Thus, a casino exempt under paragraph (d)(1)(i) or (ii) of this section must report with respect to currency in excess of $10,000 received in its nongaming businesses.

(iv) *Example.* The following example illustrates the application of the rules in paragraphs (d)(2) (i) and (iii) of this section:

*Example.* A and B are casinos having gross annual gaming revenue in excess of $1,000,000. C is a casino with gross annual gaming revenue of less than $1,000,000. Casino A receives $15,000 in currency from a customer with respect to a gaming transaction which the casino reports to the Treasury Department under §§ 103.22(a)(2) and 103.25. Casino B receives $15,000 in currency from a customer in payment for accommodations provided to that customer at Casino B's hotel. Casino C receives $15,000 in currency from a customer with respect to a gaming transaction. Casino A is not required to report the transaction under 31 U.S.C. 5331 or this section because the exception for certain casinos provided in paragraph (d)(1)(i) of this section (''the casino exception'') applies. Casino B is required to report under 31 U.S.C. 5331 and this section because the casino exception does not apply to the receipt of currency from a nongaming activity. Casino C is required to report under 31 U.S.C. 5331 and this section because the casino exception does not apply to casinos having gross annual gaming revenue of $1,000,000 or less which do not have to report to the Treasury Department under §§ 103.22(a)(2) and 103.25.

(2) *Receipt of currency not in the course of the recipient's trade or business.* The receipt of currency in excess of $10,000 by a person other than in the course of the person's trade or business is not reportable under 31 U.S.C. 5331. Thus, for example, F, an individual in the trade or business of selling real estate, sells a motorboat for $12,000, the purchase price of which is paid in currency. F did not use the motorboat in any trade or business in which F was engaged. F is not required to report under 31 U.S.C. 5331 or this section because the exception provided in this paragraph (d)(2) applies.

(3) *Receipt is made with respect to a foreign currency transaction*—(i) *In general.* Generally, there is no requirement to report with respect to a currency transaction if the entire transaction occurs outside the United States (the fifty states and the District of Columbia). An entire transaction consists of both the transaction as defined in paragraph (c)(12)(i) of this section and the receipt of currency by the recipient. If, however, any part of an entire transaction occurs in the Commonwealth of Puerto Rico or a possession or territory of the United States and the recipient of currency in that transaction is subject to the general jurisdiction of the Internal Revenue Service under title 26 of the United States Code, the recipient is required to report the transaction under this section.

(ii) *Example.* The following example illustrates the application of the rules in paragraph (d)(3)(i) of this section:

*Example.* W, an individual engaged in the trade or business of selling aircraft, reaches an agreement to sell an airplane to a U.S. citizen living in Mexico. The agreement, no portion of which is formulated in the United States, calls for a purchase price of $125,000 and requires delivery of and payment for the airplane to be made in Mexico. Upon delivery of the airplane in Mexico, W receives $125,000 in currency. W is not required to report under 31 U.S.C. 5331 or this section because the exception provided in paragraph (d)(3)(i) of this section (''foreign transaction exception'') applies. If, however, any part of the agreement to sell had been formulated in the United States, the foreign transaction exception would not apply and W would be required to report the receipt of currency under 31 U.S.C. 5331 and this section.

(e) *Time, manner, and form of reporting*—(1) *In general.* The reports required by paragraph (a) of this section must be made by filing a Form 8300, as specified in 26 CFR 1.6050I–1(e)(2). The reports must be filed at the time and in the manner specified in 26 CFR 1.6050I–1(e)(1) and (3) respectively.

(2) *Verification.* A person making a report of information under this section must verify the identity of the person from whom the reportable currency is received. Verification of the identity of a person who purports to be an alien must be made by examination of such person's passport, alien identification card, or other official document evidencing nationality or residence. Verification of the identity of any other person may be made by examination of a document normally acceptable as a means of identification when cashing or accepting checks (for example, a driver's license or a credit card). In addition, a report will be considered incomplete if the person required to make a report knows (or has reason to know) that an agent is conducting the transaction for a principal, and the return does not identify both the principal and the agent.

(3) *Retention of reports.* A person required to make a report under this section must keep a copy of each report filed for five years from the date of filing.

Dated: December 20, 2001.

**James F. Sloan,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 01–31846 Filed 12–28–01; 8:45 am]

**BILLING CODE 4820–03–P**

**DEPARTMENT OF THE TREASURY**

**31 CFR Part 103**

**RIN 1506–AA25**

## Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement That Nonfinancial Trades or Businesses Report Certain Currency Transactions

**AGENCY:** Financial Crimes Enforcement Network (''FinCEN''), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the Bank Secrecy Act regulations to require that persons who, in the course of conducting a nonfinancial trade or business, receive more than $10,000 in coins or currency in one transaction (or two or more related transactions), file a report of such transaction with the Treasury Department.

**DATES:** Written comments on all aspects of the proposed rule are welcome and must be received on or before March 1, 2002.

**ADDRESSES:** Written comments should be submitted to: Cash Reporting-Section 5331 Comments, P.O. Box 1618, Vienna, VA 22183–1618. Comments may also be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov* with the caption in the body of the text, ''*Attention:* Proposed Rule—Cash Reporting-Section 5331.'' For additional instructions on the submission of comments, see **SUPPLEMENTARY INFORMATION** under the heading ''Submission of Comments.''

*Inspection of comments:* Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400.

**FOR FURTHER INFORMATION CONTACT:** Cynthia L. Clark, Deputy Chief Counsel, or Laurence J. Levine, Attorney-Advisor, Office of Chief Counsel, FinCEN, (703) 905–3590.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Published elsewhere in this issue of the **Federal Register** is an interim rule adding a new section 31 CFR 103.30. The text of the interim rule is the same as the text of this notice of proposed rulemaking.

This document proposes a new section 31 CFR 103.30 in order to implement 31 U.S.C. 5331, as added to the Bank Secrecy Act by section 365 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Public Law 107–56 (October 26, 2001).

### II. Statutory Provisions

The Bank Secrecy Act, Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311, *et seq.*, authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311, *et seq.*), appear at 31 CFR part 103. The authority of the Secretary to administer Title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

Under 31 U.S.C. 5331, any person who is engaged in a trade or business and who, in the course of such trade or business, receives more than $10,000 in coins or currency in one transaction (or two or more related transactions) is required to file a report with respect to such transaction (or related transactions) with the Treasury Department. Reporting under section 5331 does not apply to amounts received in a transaction reported under 31 U.S.C. 5313 and the accompanying regulations.

For purposes of section 5331, currency includes foreign currency, and to the extent provided in regulations, any monetary instrument, whether or not in bearer form, with a face amount of not more than $10,000. Such monetary instruments shall not include any check drawn on the account of the writer in a financial institution referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), or (S) of 31 U.S.C. 5312 (a)(2).

Reports required under section 5331 must be in such form as the Secretary may prescribe. The reports must contain: (1) The name, address, and such other identification information as the Secretary may require, of the person from whom the coins or currency was received; (2) the amount of coins or currency received; (3) the date and nature of the transaction; and (4) such other information, including the identification of the person filing the report, as the Secretary may prescribe.

### III. Proposed Rule

With a minor exception, section 5331 requires reporting of the same transaction that must be reported to the Internal Revenue Service (''IRS'') under section 6050I of title 26, United States Code, and 26 CFR 1.6050I–1. Section 5331 does not require reporting of currency received by clerks of court. *Cf.* 26 U.S.C. 6050I(g). Further, section 5331 does not require the person making a report under section 5331 to furnish to the person whose name is required to be set forth on the report a statement concerning the report. *Cf.* 26 U.S.C. 6050I(e).

Because section 5331 is substantially similar to 26 U.S.C. 6050I, the proposed rule provides that persons required to report a transaction under section 5331 must make that report by filing a joint FinCEN/IRS form with the IRS. Under this dual-reporting regime, only one form is required to be filed for a transaction subject to both section 5331 and section 6050I of title 26. Thus, the proposed rule imposes no new reporting or record-keeping burden on persons required to report certain transactions under section 5331.

Because of the similarity between the provisions, FinCEN believes it is appropriate that the proposed rule adopt the same rules for multiple payments, monetary instruments, and designated reporting transactions as appear in the regulations under section 6050I. Thus, for example, the proposed rule would require that recipients aggregate an initial payment and subsequent payments such that a report is required if the aggregation exceeds $10,000 within one year of the initial payment. In addition, the proposed rule, like 26 CFR 1.6050I–1, includes within the definition of currency monetary instruments such as cashiers' checks, bank drafts, traveler's checks or money orders, not having a face amount of more than $10,000, when such monetary instruments are received in a ''designated reporting transaction,'' *i.e.,* certain retail sales as defined in the regulation.

### IV. Submission of Comments

An original and four copies of any comment (other than one sent electronically) must be submitted. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as

[1] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the USA Patriot Act of 2001.

confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

**V. Regulatory Flexibility Act**

It is hereby certified that the proposed rule is not likely to have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the proposed rule applies only to persons already required to report information concerning transactions under the Internal Revenue Code and imposes no new reporting or recordkeeping requirements on those persons. Accordingly, an initial regulatory flexibility analysis is not required by the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

**VI. Paperwork Reduction Act**

The collection of information contained in this regulation has been submitted to the Office of Management and Budget (OMB) for review under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Alexander T. Hunt, Office of Information and Regulatory Affairs, New Executive Office Building, Room 3208, Washington, DC 20503, with copies to FinCEN at Post Office Box 39, Vienna, VA 22183. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

FinCEN specifically invites comments on (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information (see below); (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

*Desciption of Respondents:* Persons receiving cash payments greater than $10,000 in the course of a trade or business.

*Estimated Number of Respondents:* 46,800.

*Frequency:* As required.

*Estimate of Burden:* None. Because this information is already required to be reported to the Internal Revenue Service pursuant to 26 U.S.C. 6050I, and is subject to IRS recordkeeping requirements, there is no burden associated with this collection of information. This regulation does not impose any requirement on any person that is not already required by 26 U.S.C. 6050I.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

**VII. Executive Order 12866**

The Department of the Treasury has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

**VIII. Unfunded Mandates Act of 1995 Statement**

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this proposal provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

**List of Subjects in 31 CFR Part 103**

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

For the reasons set forth above in the preamble, FinCEN proposes to amend 31 CFR Part 103 as follows:

## PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5331.

2. The text of proposed § 103.30 is the same as the text of 31 CFR 103.30 set out in an interim rule rule published elsewhere in this issue of the **Federal Register**.

Dated: December 20, 2001.

**James F. Sloan,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 01–31847 Filed 12–28–01; 8:45 am]

BILLING CODE 4820–03–P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[TD 8974]**

**RIN 1545–BA48**

## Amendment to Section 6050I Cross-Referencing Section 5331 of Title 31 Relating to Reporting of Certain Currency Transactions by Nonfinancial Trades or Businesses Under the Bank Secrecy Act

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final amendments to the Income Tax Regulations under section 6050I of the Internal Revenue Code which requires persons to report information about financial transactions to the IRS, and section 5331 of title 31 which requires persons to report similar information about certain transactions to the Financial Crimes Enforcement Network. These regulations provide that this information shall be reported on the same form as prescribed by the Secretary.

**DATES:** *Effective Date:* These regulations are effective December 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, contact Tiffany P. Smith at (202) 622–4910 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background and Explanation of Provisions

This document amends the Income Tax Regulations (26 CFR part 1) under section 6050I of the Internal Revenue Code (Code). These final regulations address the related reporting requirements of section 6050I of the Code and section 5331 of title 31.

The Bank Secrecy Act, Titles I and II of Public Law 91–508 (84 Stat. 1116) as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311, *et seq.*, authorizes the Secretary of the Treasury, inter alia, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311, *et seq.*), appear at 31 CFR part 103.

Section 365 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT Act), Public Law 107–56 (115 Stat. 272) amended the Bank Secrecy Act by adding section 5331. Under 31 U.S.C. 5331, any person who is engaged in a trade or business and who, in the course of such trade or business, receives more than $10,000 in coins or currency in one transaction (or two or more related transactions), is required to file a report with respect to such transaction (or related transactions) with the Treasury Department. Reporting under section 5331 does not apply to amounts received in a transaction reported under 31 U.S.C. 5313 and the accompanying regulations.

The reporting requirement under section 5331 of title 31 is analogous to the reporting requirement administered by the IRS, under section 6050I of title 26, United States Code, and 26 CFR 1.6050I–1. Inasmuch as section 6050I of title 26 requires persons to report information about financial transactions to the IRS, and section 5331 of title 31 requires persons to report similar information about certain transactions to the Financial Crimes Enforcement Network, these final regulations provide that this information shall be reported on the same form as prescribed by the Secretary.

### Effective Date of Regulations

These regulations are effective as of the date of publication in the **Federal Register**.

### Special Analyses

Because this regulation merely advises taxpayers that information reported under section 6050I is, with one exception, also reported under 31 U.S.C. 5331, and imposes no requirement on any person, notice and public procedure are unnecessary pursuant to 5 U.S.C. 553(b)(B). For this reason, a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(3)

It has been determined that this final regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Code, this final regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of these final regulations is Tiffany P. Smith, Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Final Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** Section 1.6050I–0 is amended by revising the entry for § 1.6050I(a)(1) and adding entries to the table for § 1.6050I–1(a)(1)(i) and (a)(1)(ii) to read as follows:

**§ 1.6050I–0 Table of contents.**

* * * * *

**§ 1.6050I–1 Returns relating to cash in excess of $10,000 received in a trade or business.**

(a) * * *
(1) Reportable transaction.
(i) In general.
(ii) Certain financial transactions.

* * * * *

Par. 3. Section 1.6050I–1 is amended by:

1. Redesignating paragraph (a)(1) as paragraph (a)(1)(i).

2. Adding a new paragraph heading for (a)(1).

3. Adding paragraph (a)(1)(ii).

The additions read as follows:

**§ 1.6050I–1 Returns relating to cash in excess of $10,000 received in a trade or business.**

(a) *Reporting requirement*—(1) *Reportable transaction*—(i) *In general.* * * *

(ii) *Certain financial transactions.* Section 6050I of title 26 of the United States Code requires persons to report information about financial transactions to the Internal Revenue Service, and section 5331 of title 31 of the United States Code requires persons to report similar information about certain transactions to the Financial Crimes Enforcement Network. This information shall be reported on the same form as prescribed by the Secretary.

* * * * *

Approved: December 20, 2001.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

**Mark Weinberger,**

*Assistant Secretary of the Treasury.*

[FR Doc. 01–31848 Filed 12–28–01; 8:45 am]

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Federal Register

Monday,
December 31, 2001

# Part VII

# Department of Transportation

## Federal Motor Carrier Safety Administration

## 49 CFR Part 393

## Parts and Accessories Necessary for Safe Operation; Manufactured Home Tires; Final Rule

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 393**

**[Docket No. FMCSA–97–2341]**

# Parts and Accessories Necessary for Safe Operation; Manufactured Home Tires

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule; denial of petitions for rulemaking and for extension of deadline.

**SUMMARY:** The FMCSA is amending its tire regulation to reflect the expiration of a provision allowing the overloading of tires used for the transportation of manufactured homes. The agency is also denying petitions from the Manufactured Housing Institute (MHI) for rulemaking and for an extension of the expiration date of the overloading provision, and from Multinational Legal Services, PLLC (Multinational Legal Services), for rescission of an earlier extension of the expiration date. Currently, tires used in the transportation of manufactured homes may be loaded up to 18 percent over the load rating marked on the sidewall of the tires, or in the absence of such a marking, 18 percent above the load rating specified in publications of certain organizations specializing in tires. The rule was scheduled to expire—thus prohibiting tire overloading—on November 21, 2000, unless extended by joint agreement of FMCSA and the Department of Housing and Urban Development (HUD). The expiration date was delayed until December 31, 2001, to give the agency enough time to complete its review of the MHI's petition to allow 18-percent overloading on a permanent basis. Denial of all petitions means motor carriers are prohibited from transporting manufactured homes built on or after January 1, 2002, in interstate commerce on overloaded tires.

**DATES:** The effective date for this final rule is December 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry W. Minor, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

## Background

On February 18, 1998, the Federal Highway Administration (FHWA) and the Department of Housing and Urban Development (HUD) jointly published a final rule amending, respectively, the Federal Motor Carrier Safety Regulations (FMCSRs) and an interpretation of the Manufactured Home Construction and Safety Standards (see 63 FR 8330). The FHWA and HUD actions reduced the amount of tire overloading allowed (at the time up to 50 percent above the tire manufacturer's load rating) on tires used to transport manufactured homes. As a result of the rulemaking, the maximum amount of loading on a manufactured home tire could not exceed the manufacturer's load rating by more than 18 percent. Manufactured homes transported on tires overloaded by 9 percent or more could not be operated at speeds exceeding 80 kilometers per hour (km/hr) (50 mph). The final rule allowed 18-percent overloading for a two-year period. The two-year period began on November 16, 1998, the effective date of the final rule, and was scheduled to end on November 20, 2000.

In publishing the final rule and interpretative bulletin, the agencies indicated there was sufficient data to support the premise that overloading tires may be potentially unsafe. The agencies also indicated that unless both of them were persuaded by the end of the two-year period that 18-percent overloading did not pose a risk to the traveling public, or have an adverse impact on safety or the ability of motor carriers to transport manufactured homes, any overloading of tires beyond their design capacity would be prohibited.

## MHI Petition for Rulemaking

On August 7, 2000, the MHI filed a petition for rulemaking with the FMCSA and HUD to initiate a joint rulemaking to amend the agencies' rules concerning manufactured home tires to enable the manufactured home industry to continue to exceed the tire manufacturer's load rating by up to 18 percent, indefinitely. The MHI requested that (1) the FMCSA amend 49 CFR 393.75(g); and (2) HUD revise Interpretative Bulletin J–1–76 to 24 CFR part 3260. MHI recognized that it would be difficult, if not impossible, for the FMCSA and HUD to act on the petition and, if granted, complete the rulemaking before November 20, 2000. Therefore, the MHI also petitioned the FMCSA and HUD to provide interim regulatory relief from the November 20, 2000, deadline until the agencies acted on the petition for rulemaking. A copy of the MHI's petition for rulemaking and request for an exemption are included in the docket referenced at the top of this document.

## FMCSA and HUD Preliminary Responses to the MHI Petition

On November 21, 2000, the FMCSA published a final rule delaying the termination date of the rule allowing overloading of manufactured home tires (65 FR 70218). The FMCSA indicated that it had met with officials from HUD to discuss the MHI's request. Both agencies believed that MHI's petition and its supporting documentation warranted a thorough review, but because relevant staff were otherwise committed, neither was able to complete such an analysis before November 20, 2000, the termination date established by the 1998 final rule. On November 21, 2000, HUD amended Interpretative Bulletin J–1–76 to remove a paragraph that referenced the November 20, 2000, termination date.

## Multinational Legal Services Petition

On January 16, 2001, Multinational Legal Services filed a petition with the FMCSA and HUD requesting that the FMCSA and HUD rescind their regulatory actions relating to overloading of manufactured home tires. A copy of Multinational Legal Services' petition is included in the docket referenced at the beginning of this document. Multinational Legal Services argued that the FMCSA and HUD actions delaying the termination date are contrary to both Federal law and the public interest. Multinational Legal Services claimed that the FMCSA violated 5 U.S.C. 553(b) by publishing the final rule without prior notice and request for public comment. It said the agencies could have requested public comment when the MHI submitted its preliminary data on July 7, 2000. Multinational Legal Services argued that the ''good cause'' exception to the requirement for requesting public comment prior to issuing a final rule should not apply in this case.

In addition, Multinational Legal Services asserted that the delay in the termination date was issued in violation of the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113, 110 Stat. 775) which requires that Federal agencies use standards established by voluntary consensus standards organizations unless the adoption of the voluntary standards would be impractical or inconsistent with law.

**FMCSA Notice of Intent To Deny the Petitions for Rulemaking**

On April 20, 2001 (66 FR 20345), the FMCSA published a notice announcing the agency's intent to deny MHI's and Multinational Legal Services' petitions for rulemaking. The agency explained that the data submitted by MHI in August, 2000, did not provide an adequate basis on which to allow continued 18-percent overloading of tires. FMCSA requested comments from all interested parties, and encouraged commenters to discuss any of the specific issues mentioned in the notice, as well as other issues they believed to be relevant.

**Discussion of Comments**

The FMCSA received eight comments in response to its notice of intent to deny the petitions. The commenters were: the California Manufactured Housing Institute; Fleetwood Enterprises, Inc. (Fleetwood); Greenball Corporation (Greenball); the Manufactured Housing Institute (MHI); Mobile Home Materials, Inc.; Multinational Business Services, Inc. (Multinational Business Services); the Oregon Manufactured Housing Association; and TJT, Inc.

The California Manufactured Housing Institute, Fleetwood, MHI, the Oregon Manufactured Housing Association, and TJT, Inc. opposed the FMCSA's proposal to deny MHI's petition to allow overloading of tires on a permanent basis. Greenball, Mobile Home Materials, and Multinational Business Services supported the FMCSA's proposal. A discussion of the major issues raised by the commenters appears below, followed by the FMCSA's response.

*Comments Opposed to FMCSA's Proposal*

TJT, Inc. indicated that it supported the February 18, 1998 final rule that established a schedule for phasing out the practice of overloading of tires used in the transportation of manufactured homes. However, TJT believes that MHI's data concerning tire failure rates justify a rule to allow 18 percent overloading on a permanent basis.

> We believe that the imposition of this rule revision was necessary and well thought out, and implementation has been relatively uneventful. However, it would seem that we have now reached the point of rapidly diminishing return[s]. If this rule is allowed to ''sunset,'' and allowable tire loading is further reduced to 100 percent of the sidewall rating, transport of the homes would require either the use of an ''F'' rated tire, which is substantially more expensive and currently unavailable in quantity, or the addition of more axles. Many home sections currently use five and six axles to meet the tire loading requirements. Addition of even more axles would severely impact the ability to turn the unit, and would place greater strain on all of the running gear components when turning, increasing the potential for failure. Reducing the length of each section and increasing the number of sections is an option that, while making it possible to meet further load restrictions safely, would greatly add to the cost.

TJT believes the 18-percent overloading currently allowed is achieving the desired result of reduced tire failure and the accompanying benefits of lessened traffic obstruction, transporter downtime, and transit damage. TJT states:

> To further restrict tire loading would be counter productive, in that any further potential reductions in tire failure would be minimal, and offset by major cost implications and the possible creation of additional safety risks. The rule, as it currently exists should be extended indefinitely or made permanent.

MHI argues that FMCSA's observations and conclusions ''gloss over'' the existence and the significance of the data MHI presented with its petition. MHI stated:

> By focusing just upon the data gleaned from the study of the 53 shipments, showing individual wheel weights and possible causes of tire failure, FMCSA suggests the existence of a correlation between tire overloading and tire failure and, more importantly, between tire overloading and unreasonable risks to the traveling public and the safe transportation of the manufactured homes. MHI has never accepted the validity of either correlation. The litmus test is whether tire failures that manufactured housing transporters have experienced have resulted in accidents involving property damage or personal injury. Only if they have is there a need to engage in the second inquiry, whether the tire failures causing the accidents are the result of tire overloading.

MHI believes that the FMCSA was unrealistic to have expected them to ''scientifically authenticate'' the percentage of tire failures attributable to 18-percent overloading. MHI also argues that FMCSA does not address the potential effects that denial of the petition would have on the manufactured housing industry. They believe the potential effects are material and stem from denying the petition without allowing sufficient time for a transition to upgraded tires.

*Comments in Support of FMCSA's Proposal*

Mobile Home Materials believed the FMCSA should not allow overloading of tires and that the new tires necessary to comply with the prohibition on overloading would be available in sufficient quantity. Mobile Home Materials stated:

> With regard to availability of the 8–14.5 F12 (2,790 lbs carry capacity) or equivalent tire: This tire is made from the same molds as the 8–14.5 E10 tire. This was not the case for the change from 7–14.5 D8 to 8–14.5 E10 tires in 1998. There is adequate capacity for there to be no disruption in supply to the industry for a January 1, 2002 implementation date if you issue a final ruling by August 2001. The additional cost to the industry will be significantly less than the change from the 50 percent overload to the current [18-percent] overload.

Greenball stated:

> We are supporting the denial of the petitions concerning the overloading of mobile home tires of 118 [percent]. We have developed a tire for the industry that has a load carrying capacity of 3070 lbs at normal highway speeds. This tire is the same size as the industry is currently using but in a LRG rating. We feel this tire will perform to the standards set forth and will thus eliminate the need to overload the units as is now being done.

**FMCSA Response to Comments**

*MHI Petition*

The FMCSA has carefully considered the views of the commenters in favor of MHI's petition but continues to believe that there is no basis for allowing the manufactured home industry to continue its practice of overloading tires. None of the commenters' arguments negate the fact that exceeding tire manufacturers' load ratings reduces significantly the margin of safety between the maximum load that the tires are designed to support under normal circumstances (e.g., normal inflation pressures, operating speeds and temperatures, etc.), and the maximum load the tires can withstand before they fail. There is no technical reason for allowing such operating practices when tires of greater load carrying capacity could be purchased by the producers of manufactured homes, but would not be purchased by most of these producers until the Federal government mandates the use of such tires.

As for MHI's argument that FMCSA had unrealistic expectations about the data submitted with their petition, we never indicated that we were in search of scientifically flawless data. We recognize the realities of data collection and analysis in the real world in general, and in the transportation industry in particular. However, data should be of such quality and quantity that a statistically meaningful analysis could be conducted. This was not the case for the data submitted by MHI.

As we indicated in our notice of intent to deny MHI's petition, data from

the industry indicates that in 1999, the manufactured housing industry shipped 122,926 single-section and 225,745 multi-section homes for a total of 582,498 sections transported. However, the MHI provided data concerning on-the-road performance, including the amount of tire loading, for only 53 shipments of manufactured homes. Therefore, any inferences made from MHI's data would be based on a sample size of approximately 0.0091 percent [100 x (53/582,498)] of all shipments transported in 1999. The agency continues to believe this sample size is entirely too small to make any valid judgment about the on-the-road performance of tires overloaded by 18 percent.

Some commenters supported continued tire overloading because they claimed it has not been shown to contribute to accidents, injuries, or fatalities. The lack of such evidence is not surprising—the causes of accidents are often hard to determine—but the absence of accident data does not, in and of itself, serve as proof that there have not been accidents attributable in whole, or in part, to tire overloading. FMCSA does not believe that regulatory action should necessarily be foreclosed by the lack of specific accident-causation data. Tire failures can and do lead to secondary accidents by blocking part of the roadway or shoulder, disrupting traffic flow, or even creating the conditions for a severe crash if an inattentive driver fails to recognize that a vehicle just ahead has slowed dramatically or stopped. There is no reason to believe that tire failures on manufactured homes could not cause similar events. The agency's mission is to prevent or reduce accidents. Regularly loading tires beyond the maximum weight limit designated by the manufacturer is almost by definition a likely cause of tire failure. And a reduction in tire failures—whatever the cause of those failures—is likely to prevent accidents in the long run.

The April 23, 1996, notice of proposed rulemaking requested public comments concerning the costs and benefits associated with the rule to end the practice of overloading tires used in the transportation of manufactured homes (61 FR 18014). The comments were considered and appropriate revisions to the estimates were included in the preamble for the February 18, 1998, final rule setting conditions for phasing out the overloading of tires. The analysis demonstrated that the benefits of the rule exceed the costs (see 63 FR 8330). Neither the MHI nor any of the other commenters responding to the April 20, 2001, notice of intent provided a detailed analysis to refute the analysis presented in the preamble of the final rule, or identified deficiencies in the methodology used to generate the estimates.

Some of the commenters suggested that the industry needed at least six months' warning of any final decision to prohibit tire overloading. FMCSA announced its preliminary intent to do so on April 20, 2001, and explained its reasoning in detail. FMCSA encouraged commenters to ''discuss any of the specific issues mentioned'' in that document and said that ''[d]epending on the comments received, the agency will issue a notice denying the MHI's and Multinational's petitions.'' While the notice of intent to deny MHI's petition was not a definitive response to the petition, it was a clear indication that we did not intend to initiate a rulemaking to allow tire overloading after the December 31, 2001, expiration date unless the industry could present evidence clearly demonstrating the safety of 18-percent overloading or arguments casting significant doubt upon the agency's reasoning.

*Multinational Legal Services' Petition To Rescind the November 21, 2000, Final Rule*

With regard to Multinational Legal Services' petition to rescind the November 21, 2000, final rule extending the deadline for compliance with the prohibition on tire overloading, none of the commenters discussed the issues raised in that petition.

We continue to believe that the period between MHI's submission of its August 7, 2000, petition for rulemaking, and the November 20, 2000, expiration date for the overloading provision was not long enough to allow the agency, occupied with a wide variety of prior commitments, to prepare a notice that discussed the issues in meaningful detail, review the public comments submitted, and issue a final decision. Our actions were necessary and consistent with the requirements of the Administrative Procedure Act given the impracticability of publishing a notice requesting public comments on the MHI petition prior to the expiration date.

We also continue to believe that our actions concerning overloaded tires are not inconsistent with the National Technology Transfer and Advancement Act of 1995, or the Office of Management and Budget's Circular No. A–119, which provides executive direction to Federal agencies in implementing the statutory requirements. We did not establish a government-unique standard for the design of manufactured home tires, or a government-unique standard concerning the use of such tires. Furthermore, our actions did not ignore a private sector ''consensus standard'' as defined in OMB's Circular No. A–119.

We carefully examined the Tire and Rim Association's ''Year Book''—the only private-sector publication that appears to be relevant to the current debate—and determined that it is not a consensus standard applicable to overloaded manufactured home tires. The Tire and Rim Association publication provides information on interchangeability standards for tires and rims—the ability to replace components, parts, or equipment of one manufacturer with those of another, without losing function or suitability. Furthermore, the organization disclaimed all responsibility or involvement with respect to the use or performance of any tire. Since the only private-sector standard we are aware of is not a consensus standard applicable to overloaded manufactured home tires, we did not violate the National Technology Transfer and Advancement Act of 1995.

**MHI's Petition for Postponement of the December 31, 2001, Deadline**

On October 10, 2001, MHI petitioned the FMCSA to extend the deadline for compliance with the prohibition on tire overloading until 180 days after the date the agency publishes its decision on MHI's August 7, 2000, petition. They argued that it is virtually impossible for the manufactured housing industry to fully comply with the rule by January 1, 2002, if the agency denies the petition to allow 18-percent overloading on a permanent basis. A copy of the petition is in the docket referenced at the beginning of this notice.

In addition, MHI noted that ''[p]rior to the 118 Percent Rule, the provisions of 49 CFR 393.75(f) were applicable to the movement of manufactured homes. In the event the 118 Percent Rule is sunsetted, the provisions of 49 CFR 393.75(f) will again be applicable.''

The Manufactured Housing Association for Regulatory Reform (MHARR) and Multinational Business Services submitted comments to the docket in response to MHI's petition for postponement of the January 1, 2002, deadline.

MHARR supports MHI's petition because it believes Congress has given HUD primary jurisdiction over the construction of manufactured housing and HUD had not participated in FMCSA's notice-and-comment proceedings concerning MHI's petition to allow 18-percent overloading on a permanent basis. MHARR stated that

manufacturers would be left with two conflicting tire loading standards if the FMCSA does not extend the deadline and that no action should be taken without HUD's full participation.

Multinational Business Services submitted comments in opposition to the MHI's October 10, 2001, petition. Multinational Business Services argues that the MHI's petition indicates a willful disregard for Federal regulatory deadlines. Multinational Business Services believes MHI has been provided with ample time to comply with the regulation and that MHI is responsible for overlooking the plain meaning of the notices terminating tire overloading.

**FMCSA Response to MHI's October 10, 2001, Petition**

The FMCSA has reviewed MHI's petition and the comments of MHARR and Multinational Business Services and determined that § 393.75(g) should not be amended to provide an additional 180 days from the date of publication of the agency's final decision on MHI's August 7, 2000, petition for the industry to comply with the prohibition on the overloading of tires. The agency agrees with Multinational Business Services that MHI has been provided ample time to comply with the rule and that MHI should have recognized the meaning of the FMCSA's **Federal Register** notices in response to the August 7, 2000, petition for rulemaking.

MHI pointed out that § 393.75(f) would still allow tire overloading at the option of each State, even if § 393.75(g) were sunsetted. It was not the intention of FMCSA and HUD that the general provision concerning tire loading for commercial motor vehicles be applicable to tire loading for manufactured homes after the expiration date. While the regulatory language adopted in the February 18, 1998, final rule did not express our intent as clearly as we intended, the preamble to the rulemaking was explicit. The Summary section of the February 18, 1998, final rule states:

> Because the agencies have sufficient data indicating that overloading is potentially unsafe, unless both agencies are persuaded that 18 percent overloading does not pose a risk to the traveling public, or have an adverse impact on safety or the ability of motor carriers to transport manufactured homes, *any overloading of tires beyond their design capacity will be prohibited at the end of this two-year period* [63 FR 8330, emphasis added].

The agency clearly indicated that the expiration date was to be the deadline for the industry to discontinue the practice of overloading tires. By codifying all of the overloading rules applicable to manufactured homes in § 393.75(g), the agency narrowed the scope of § 393.75(f) to effectively exclude manufactured homes.

This final rule makes a technical amendment to the rule only for the purpose of clarifying the applicability of the requirements for homes built before and after December 31, 2001, now that we have reached the expiration date for the tire overloading provision. Section 393.75(f) has been amended slightly to ensure that it will remain inapplicable to manufactured homes, and § 393.75(g)(2) clearly bars tire overloading for manufactured homes labeled on or after January 1, 2002.

With regard to MHARR comments, FMCSA agrees that while HUD has primary authority over the construction of manufactured housing, FMCSA has primary authority over highway transportation by commercial motor vehicle. Therefore, FMCSA's action of today will effectively end any permissibility of overloading.

FMCSA worked closely with HUD in conjunction with issuing the 1998 final rule, and the November 21, 2000, extension of the compliance date. We notified HUD prior to our publication of the April 20, 2001, notice of intent to deny the petitions and we notified the agency prior to the publication of this final rule. Section 393.75(g) explicitly states that the 18-percent overloading provision will expire unless extended by mutual consent of the FMCSA and the Department of Housing and Urban Development.

**FMCSA Decision**

For the reasons given above, the FMCSA is denying MHI's August 7, 2000, and October 10, 2001, petitions, and Multinational Legal Services' January 16, 2001, petition. The agency has worked with HUD to require the manufactured housing industry to alter its practice of overloading tires by up to 50 percent above the tire manufacturer's load rating. The agencies have reduced the amount of overloading to 18 percent presently, and through the denial of the MHI's petitions, transporters of manufactured homes must discontinue the practice of overloading tires.

**Rulemaking Analysis and Notices**

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest.

In this case, additional notice and comment are unnecessary. We jointly completed a rulemaking with HUD in 1998 that established the process for phasing out the overloading of tires. The process included a two-year period during which the industry could gather data and other information to support its contention that overloading tires by 18 percent was not potentially unsafe. The industry submitted a petition on August 7, 2000, requesting that the agencies allow 18-percent overloading on a permanent basis. Although we were under no obligation to respond to the petition given the short amount of time between its submission and the November 20, 2000, expiration date, we extended the expiration date until December 31, 2001, and subsequently published a notice requesting public comment on the petition. Our notice requesting public comment included a detailed discussion of (1) the operational data submitted by MHI in August 2000; (2) the inadequacy of that data as a justification for continued tire-overloading after the expiration date of the current rule; (3) our intent to deny MHI's petition to make overloading permanent; and (4) our response to the petition from Multinational Legal Services for rescission of the extension of the original expiration date from November 20, 2000, to December 31, 2001. This final rule is a technical amendment to 49 CFR 393.75(f) and (g) to reflect the expiration of the provision allowing 18-percent overloading on December 31, 2001. The final rule does include a substantive change to the rule.

For the same reasons, the FMCSA finds, pursuant to 5 U.S.C. 553(d)(3), that there is good cause for making the final rule effective upon publication. The final rule is a technical amendment to reflect the December 31, 2001, expiration date, and to clarify the applicability of the rules to the transportation of manufactured homes built before and after the December 31, 2001, expiration date. The final rule does not change the substance of the rule.

**Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or within the meaning of Department of Transportation regulatory policies and procedures. The final rule amends § 393.75 to clarify the applicability of the rules to the transportation of manufactured homes built before and after the December 31, 2001, deadline for compliance.

Although the 1998 final rule establishing the current requirements was a significant regulatory action under section 3(f) of Executive Order 12866, the Office of Management and Budget (OMB) does not consider this amendment of the final rule to be a significant action.

**Regulatory Flexibility Act**

This action 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.*). The original rule did not have a significant effect on a substantial number of small entities, and this rule simply amends § 393.75 to reflect the expiration of the provision allowing 18-percent overloading on December 31, 2001.

**Executive Order 13132 (Federalism)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. It has been determined that this rulemaking does not have a substantial direct effect on States, nor would it limit the policy-making discretion of the States. Nothing in this document preempts any State law or regulation.

**Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

**Unfunded Mandates Reform Act of 1995**

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*) that will result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

**Paperwork Reduction Act of 1995**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this action does not affect any requirements under the PRA.

**National Environmental Policy Act**

FMCSA is a new administration within the Department of Transportation (DOT). We are striving to meet all of the statutory and executive branch requirements on rulemaking. The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order is consistent with and reflects the procedures for considering environmental impacts under DOT Order 5610.1C. The FMCSA analyzed this final rule under the NEPA and DOT Order 5610.1C. Since the final rule only clarifies the existing rule to reflect the expiration of the tire-overloading provision in 49 CFR 393.75(g), we believe it would be among the type of regulations that would be categorically excluded from any environmental assessment.

**Executive Order 12988 (Civil Justice Reform)**

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Executive Order 13045 (Protection of Children)**

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

**Executive Order 12630 (Taking of Private Property)**

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

**Executive Order 13211 (Energy Supply, Distribution, or Use)**

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because it is not economically significant and will not have a significant adverse effect on the supply, distribution, or use of energy.

**List of Subjects in 49 CFR Part 393**

Highway safety, Highways and roads, Motor carriers, Motor vehicle safety.

For the reasons discussed in the preamble, the FMCSA amends title 49, Code of Federal Regulations, chapter III, part 393 as follows:

## PART 393—[AMENDED]

1. The authority citation for part 393 continues to read as follows:

**Authority:** Sec. 1041(b) of Public Law 102–240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 31136 and 31502; 49 CFR 1.73.

2. Amend § 393.75 to revise paragraphs (f) and (g) to read as follows:

**§ 393.75 Tires.**

* * * * *

(f) *Tire loading restrictions (except on manufactured homes).* No motor vehicle (except manufactured homes, which are governed by paragraph (g) of this section) shall be operated with tires that carry a weight greater than that marked on the sidewall of the tire or, in the absence of such a marking, a weight greater than that specified for the tires in any of the publications of any of the organizations listed in Federal Motor Vehicle Safety Standard No. 119 (49 CFR 571.119, S5.1(b)) unless:

(1) The vehicle is being operated under the terms of a special permit issued by the State; and

(2) The vehicle is being operated at a reduced speed to compensate for the tire loading in excess of the manufacturer's rated capacity for the tire. In no case shall the speed exceed 80 km/hr (50 mph).

(g)(1) *Tire loading restrictions for manufactured homes built before January 1, 2002.* Manufactured homes that are labeled pursuant to 24 CFR 3282.362(c)(2)(i) before January 1, 2002, must not be transported on tires that are loaded more than 18 percent over the load rating marked on the sidewall of the tire or, in the absence of such a marking, more than 18 percent over the load rating specified in any of the publications of any of the organizations listed in FMVSS No. 119 (49 CFR 571.119, S5.1(b)). Manufactured homes labeled before January 1, 2002, transported on tires overloaded by 9 percent or more must not be operated at speeds exceeding 80 km/hr (50 mph).

(2) *Tire loading restrictions for manufactured homes built on or after January 1, 2002.* Manufactured homes that are labeled pursuant to 24 CFR 3282.362(c)(2)(i) on or after January 1, 2002, must not be transported on tires loaded beyond the load rating marked on the sidewall of the tire or, in the absence of such a marking, the load

rating specified in any of the publications of any of the organizations listed in FMVSS No. 119 (49 CFR 571.119, S5.1(b)).

Issued on: December 26, 2001.

**Julie Anna Cirillo,**

*Assistant Administrator, Chief Safety Officer.*

[FR Doc. 01–32173 Filed 12–27–01; 1:12 pm]

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Federal Register

Monday,
December 31, 2001

# Part VIII

# Department of Transportation

## Transportation Security Administration

**49 CFR Chapter XII and Part 1510**

**Imposition and Collection of Passenger Civil Aviation Security Service Fees; Interim Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Transportation Security Administration**

**49 CFR Chapter XII and Part 1510**

**[Docket No. TSA–2001–11120]**

**RIN 2110–AA01**

## Imposition and Collection of Passenger Civil Aviation Security Service Fees

**AGENCY:** Transportation Security Administration, DOT.

**ACTION:** Interim final rule.

**SUMMARY:** The Transportation Security Administration (TSA) announces the imposition of a security service fee in the amount of $2.50 per enplanement on passengers of domestic and foreign air carriers in air transportation, foreign air transportation, and intrastate air transportation originating at airports in the United States. Passengers will not be charged for more than two enplanements per one-way trip or four enplanements per round trip. The security service fee will apply to passengers using frequent flyer awards for air transportation, but may not be imposed on other nonrevenue passengers. Direct air carriers and foreign air carriers must collect the security service fees on air transportation sold on or after February 1, 2002. The direct air carriers and foreign air carriers must remit the fees imposed during each month to TSA by the last calendar day of the following month.

**DATES:** This interim final rule is effective on December 31, 2001. Although the imposition of the security service fees is statutorily exempted from the rulemaking notice and comment procedures set forth in the Administrative Procedure Act, comments received on or before March 1, 2002 will be reviewed and considered.

**ADDRESSES:** Submit written, signed comments to TSA Docket No. 2001–11120, the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard on which the following statement is made: ''Comments to Docket No. TSA–2001–11120. The post card will be date stamped and mailed to the sender. Comments also may be sent electronically to the Dockets Management System (DMS) at: *http://dms.dot.gov* at any time. Those who wish to file comments electronically should follow the instructions on the DMS web site.

**FOR FURTHER INFORMATION CONTACT:** For guidance involving technical matters: A. Thomas Park, Acting Deputy Chief Financial Officer, Department of Transportation, Office of the Secretary, Office of the Assistant Secretary for Budget and Programs, 400 Seventh St., SW., Room 10101, Washington, DC 20590; telephone (202) 366–9192. For legal interpretation or guidance: Rita M. Maristch, Department of Transportation, Office of the General Counsel, Office of Environmental, Civil Rights and General Law, 400 Seventh St., SW., Room 10102, Washington, DC 20590; telephone (202) 366–9161. Office hours are from 9:00 a.m. to 5:30 p.m., e.t. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Availability of the Interim Final Rule and Comments Received

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Boards Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov.*

Internet users can access this document and all comments received by TSA through DOT's docket management system web site, *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

### Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction. However, because TSA was just established on November 19, 2001, pursuant to Aviation and Transportation Security Act, Public Law 107–71, it does not yet have the infrastructure or personnel to provide such information and guidance. Until such time that it does, the Office of the Secretary of Transportation will handle all SBREFA inquiries. Accordingly, any small entity that has a question regarding this document may contact the individuals listed under the caption **FOR FURTHER INFORMATION CONTACT.**

### Background

*The September 11 Terrorist Attacks and the Aviation and Transportation Security Act*

The September 11, 2001 terrorist attacks as well as the potential for future attacks led Congress to enact the Aviation and Transportation Security Act, Public Law 107–71 (ATSA), November 19, 2001, which established TSA as an administration within the U.S. DOT. TSA will be headed by a Presidential appointee to a newly established position, the Under Secretary of Transportation for Security (Under Secretary). Pursuant to section 101(g)(5) of the ATSA, the Secretary of Transportation has delegated to the Deputy Secretary of Transportation the authority to carry out the functions of the Under Secretary as they relate to aviation security on an interim basis. These duties will be assumed by the Under Secretary when he takes office.

Section 118 of ATSA, which added section 44940 to Title 49, U.S.C., requires that within 60 days of ATSA's enactment, or as soon as possible thereafter, TSA impose uniform security service fees on passengers of domestic and foreign air carriers in air transportation, foreign air transportation, and intrastate air transportation originating at airports in the United States. ATSA also requires that notice of the imposition of these fees be published in the **Federal Register**. However, the statute exempts the imposition of the fees from the procedural rulemaking requirements of 5 U.S.C. 553 and the user fee requirements of 31 U.S.C. 9701. The fees are to pay the costs of providing Federal civil aviation security services, which are described in section 44940 as:

(1) The salary, benefits, overtime, retirement and other costs of screening personnel, their supervisors and managers, and Federal law enforcement personnel deployed at airport security screening locations;

(2) The costs of training such personnel and the acquisition, operation, and maintenance of equipment used by these personnel;

(3) The costs of performing background investigations of personnel;

(4) The costs of the Federal air marshals program;

(5) The costs of performing civil aviation security research and development under Title 49, U.S.C.;

(6) The costs of Federal Security Managers; and

(7) The costs of deploying Federal law enforcement personnel.

According to section 44940(a)(1), the Under Secretary is responsible for

determining the amount of the costs of providing these civil aviation security services. Section 44940(b) and (c) provides that the passenger security service fee must be reasonably related to the costs of providing civil aviation security services, but may not exceed $2.50 per enplanement or $5.00 per one-way trip. Section 44940(a)(1) also provides that the cost determinations by the Under Secretary are conclusive and are not subject to judicial review.

According to section 44940(d) and (e), an air carrier or foreign air carrier that sells a ticket for transportation is responsible for collecting the security service fees. The security service fee imposed is not considered to be part of the amount paid for taxable transportation under 26 U.S.C. 4261. Air carriers and foreign air carriers must remit the total amount of fees collected during a calendar month to TSA by the last calendar day of the following month. Any security service fees imposed on, but not collected from, an air carrier's or foreign air carrier's passengers as required by this part, are the air carrier's or foreign air carrier's responsibility and must be included with its monthly remittance. Although the law requires air carriers and foreign air carriers to remit the total amount of the fees collected each month to TSA, carriers may retain the interest that accrues on the principal between the time of collection and remittance in accordance with section 44940(e)(3). Section 44940(e)(4) permits the Under Secretary to require air carriers and foreign air carriers to provide any information necessary to verify that the security service fees have been collected and remitted in accordance with law and regulation.

*The Interim Final Rule*

Pursuant to delegated authority, the Deputy Secretary has determined that the security service fee to be paid by passengers will be $2.50 per enplanement. Passengers may not be charged for more than two enplanements per one-way trip or more than four enplanements per round trip.

For purposes of this interim final rule, we have determined that a direct air carrier or foreign air carrier that provides or offers to provide air transportation and has control over the operational functions performed in providing that transportation is considered to be the selling carrier. If a passenger's air transportation includes travel on two or more carriers, or if the passenger's air transportation is otherwise on an aircraft not operated by the selling carrier, the carrier selling the air transportation is responsible for remitting the security service fees imposed.

The Under Secretary has the authority to exempt a passenger enplaning at airports in the United States from paying the security service fee in circumstances where the passenger does not receive screening services pursuant to section 44901. Under this interim final rule, the security service fee is imposed only on passengers who enplane the following direct air carriers and foreign air carriers: (1) A scheduled passenger or public charter passenger operation with an aircraft having passenger seating configuration of more than 60 seats; (2) a scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of less than 61 seats when passengers are enplaned from or deplaned into a sterile area. We invite comment to address when and whether security service fees should be imposed on additional direct air carriers and foreign air carriers.

Security service fees will not be imposed on passengers enplaning on flight segments outside the United States, but will be imposed on all flight segments originating in the United States.

Direct air carriers and foreign air carriers must collect the security service fees imposed on air transportation sold on or after February 1, 2002. The security service fee imposed by this interim final rule applies to passengers using frequent flyer awards for air transportation, but is not applicable to other nonrevenue passengers. Air carriers and foreign air carriers must identify the security service fees imposed by this part as ''September 11th Security Fee'' in all its advertisements and solicitations for air transportation.

Each direct air carrier and foreign air carrier is responsible for paying to TSA the security service fees imposed by this rule regardless of whether it collects the fees. Each direct air carrier and foreign air carrier is required to remit all security service fees imposed during February 2002 to TSA by March 31, 2002. For subsequent months, security service fees must be remitted by the last calendar day of the following month. Specific instructions concerning remittance will be provided directly to the direct air carriers and foreign air carriers and will be posted on the DOT web site at *www.dot.gov* in the near future.

The fee is set at the maximum amount permitted by ATSA because the costs of providing civil aviation security services, as determined by the Deputy Secretary, are greater than the amount that would be recovered by the collection of fees that are reasonably related to these costs. Specifically, the Deputy Secretary has determined that the costs of providing civil aviation security services under section 44940 not already funded from other sources will conservatively exceed $1 billion in fiscal year 2002 and that fees collected at the statutory maximum would yield less than $1 billion in fiscal year 2002, assuming that collections begin on February 1, 2002. It should be noted that DOT expects revenues from security service fees to fall short of the amount required to cover civil aviation security service costs. In such a case, ATSA requires that air carrier fees be assessed in order to cover the shortfall. This assessment will be accomplished through a separate notice published in the **Federal Register** during fiscal year 2002.

Under this rule, direct air carriers and foreign air carriers must establish an accounting system to properly track the amount of the security service fees imposed, collected, refunded and remitted as well as the airports at which the passengers enplaned. Direct air carriers and foreign air carriers are required to submit quarterly reports to TSA that provide an accounting of fees imposed, collected, refunded and remitted. Specific instructions concerning the submission of the quarterly reports will be provided directly to the direct air carriers and foreign air carriers and will be posted on the DOT web site at *www.dot.gov* in the near future.

Each direct air carrier and foreign air carrier that collects security service fees from more than 50,000 passengers annually must provide for an audit of its security service fee accounts and activities by an independent certified public accountant on an annual basis. The accountant must include in the audit an opinion on whether (1) the direct air carrier's or foreign air carrier's procedures for collecting, holding, and remitting the fees are fair and reasonable; and (2) whether the quarterly reports fairly represent the net transactions in the security service fee accounts. The reports, which are due to the Under Secretary on the last calendar day of the month following the quarter in which the fees were imposed, must provide an accounting of the fees imposed, collected, refunded and remitted. The reports must specifically identify the carrier involved, the total security service fees imposed, collected, refunded and remitted, the number of enplanements for which the fee was collected, the total number of frequent flyer and nonrevenue passengers, the

total number of passenger enplanements for which the fee was imposed but not collected, and the reasons that the fee was not collected in such circumstances.

This rule requires direct air carriers and foreign air carriers to allow certain authorized Federal representatives to review and audit any of the carrier's books and records and provide other information to verify that the security service fees were properly collected and remitted.

The rule's enforcement provision states that direct air carriers and foreign air carriers who fail to comply with the requirements of 49 U.S.C. 44940 or this regulation may be found to be engaging in unfair and deceptive practices in violation of 49 U.S.C. 41712. The rule also provides notice that the United States may seek collection of any funds due it by the direct air carrier or foreign air carrier in accordance with 49 CFR part 89. These remedies are in addition to any others provided by law.

*Requests for Waiver*

Although not legally bound to do so, air carriers and foreign air carriers may wish to identify the security service fee on a ticket they issue for air transportation. Because ATSA requires that the security service fees be collected as soon as possible, there may be insufficient time to reconfigure the ticket to allow for such a fee category. Therefore, DOT will entertain an air carrier's or foreign air carrier's request that it be permitted to combine the amount of the security service fee with the amount of the passenger facility charges (PFC) identified in the PFC category on the ticket for a transitional period not to exceed six months. DOT will also entertain a request for a waiver of any DOT and Federal Aviation Administration requirement that it believes may conflict with the security service fee as imposed by this part. The request for a waiver must be in writing, explain the conflict in detail, and be directed to TSA Docket No. 2001–11120, the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. DOT will address requests for a waiver on a case-by-case basis.

**Good Cause for Immediate Adoption**

Section 44940(d)(1) of title 49, U.S.C., explicitly exempts the imposition of the civil aviation security service fees authorized in section 44940 from the procedural rulemaking notice and comment procedures set forth in 5 U.S.C. 553. Apart from that exemption, it would be impractical and contrary to the public interest to provide for notice and comment before issuing this rule. Immediate action is necessary to begin collecting the security service fees provided for by the statute. However, TSA will consider all comments received on or before the closing date for comment, including comments received before the issuance of this rule. We will also consider comments filed late to the extent practicable. We may amend this rule in light of the comments we receive.

**Paperwork Reduction Act**

TSA has determined that this interim final rule will impose new collection of information burdens within the meaning of the Paperwork Reduction Act of 1995 (PRA). TSA is required to submit this proposed collection of information to Office of Management and Budget (OMB) for review and approval and, accordingly, seeks public comments. Interested parties are invited to send comments regarding any aspect of the information collection requirements, including, but not limited to: (1) Whether the collection of information is necessary for the performance of TSA, including whether the information has practical utility; (2) the accuracy of the estimated burden that DOT has provided to OMB; (3) ways to enhance the quality, utility, and clarity of the collection of information, and (4) ways to minimize the collection burden without reducing the quality of the information collected.

Pursuant to 5 CFR 1320.13, *Emergency processing,* TSA has asked OMB for temporary emergency approval for this collection. We will publish a **Federal Register** notice with the OMB number when it is approved.

**Economic Analyses**

This rulemaking action is taken in an emergency situation within the meaning of Section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department's Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and Department's policies and procedures because it may impose significant costs on air carriers and foreign air carriers. An assessment in accordance with the Executive Order will be conducted in the future. No additional regulatory analysis or evaluation accompanies this rule. TSA has not assessed whether this rule will have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980. When no notice of proposed rulemaking has first been published, the Regulatory Flexibility Act does not apply.

The current security threat requires that direct air carriers and foreign air carriers comply with the necessary actions to ensure the safety and security of passengers and operations. Therefore consistent with section 44940, the security service fee imposed will be $2.50 per passenger. Passengers will not be charged for more than two enplanements per one-way trip or four enplanements per round trip. Direct air carriers and foreign air carriers are responsible for collecting these fees on or after February 1, 2002. OMB has reviewed this rule under the provisions of section 6(a)(3)(D) Executive Order 12866.

**Executive Order 13132, Federalism**

The TSA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.

The requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply when rulemaking actions are taken without the issuance of a notice of proposed rulemaking. Accordingly, the TSA has not prepared a statement under the Act.

**Environmental Review**

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

**Energy Impact**

The energy impact of this rule has been assessed in accordance with the

Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended. (42 U.S.C. 6362). It has been determined that this rule is not a major regulatory action under the provisions of the EPCA.

**List of Subjects in 49 CFR Part 1510**

Accounting, Auditing, Air carriers, Air transportation, Enforcement, Federal oversight, Foreign air carriers, Reporting and recordkeeping requirements, Security measures.

Issued in Washington, DC, on December 26th, 2001.

**Michael P. Jackson,**

*Deputy Secretary.*

For the reasons set forth in the preamble, the Transportation Security Administration establishes a new chapter XII consisting of part 1510 in Title 49 of the Code of Federal Regulations to read as follows:

**Chapter XII—Transportation Security Administration, Department of Transportation**

## PART 1510—PASSENGER CIVIL AVIATION SECURITY SERVICE FEES

Sec.
1510.1 Applicability and purpose.
1510.3 Definitions.
1510.5 Imposition of security service fees.
1510.7 Air transportation advertisements and solicitations.
1510.9 Collection of security service fees.
1510.11 Handling of security service fees.
1510.13 Remittance of security service fees.
1510.15 Accounting and auditing requirements.
1510.17 Reporting requirements.
1510.19 Federal oversight.
1510.21 Enforcement.

**Authority:** 49 U.S.C. 44940.

### § 1510.1 Applicability and purpose.

This part prescribes a uniform fee to be paid by passengers of direct air carriers and foreign air carriers in air transportation, foreign air transportation, and intrastate air transportation originating at airports in the United States to pay for the costs of providing civil aviation security services as described in 49 U.S.C. 44940.

### § 1510.3 Definitions.

The following definitions apply in this part:

*Air carrier* means a citizen of the United States who undertakes directly to engage in or provide air transportation.

*Air transportation* means intrastate, interstate or foreign air transportation.

*Aircraft* means a device that is used or intended to be used for flight in the air.

*Airport* means any landing area used regularly by aircraft for receiving or discharging passengers or cargo.

*Direct air carrier and foreign air carrier* means a selling carrier.

*Foreign air carrier* means any person other than a citizen of the United States who undertakes directly to engage in or provide air transportation.

*Foreign air transportation* means the carriage by aircraft of persons for compensation or hire between a place in the United States and any place outside of the United States.

*Frequent flyer award* means a zero-fare award of air transportation that a domestic air carrier or foreign air carrier provides to a passenger in exchange for accumulated travel mileage credits in a customer loyalty program, whether or not the term frequent flyer is used in the definition of that program.

*Interstate air transportation* means the carriage by aircraft of persons for compensation or hire within the United States.

*Intrastate air transportation* means the carriage of persons for compensation or hire wholly within the same State of the United States.

*Nonrevenue passenger* means a passenger receiving air transportation from an air carrier or foreign air carrier for which the air carrier or foreign air carrier does not receive remuneration.

*One-way trip* means any trip that is not a round trip.

*Origin point* means the location at which a trip on a complete air travel itinerary begins.

*Passenger enplanement* means a person boarding in the United States in scheduled or nonscheduled service on aircraft in intrastate, interstate, or foreign air transportation.

*Principal* means the aggregate amount of all passenger security services fees due to be remitted to the Transportation Security Administration by an air carrier as required by this part.

*Round trip* means a trip on an air travel itinerary that terminates at the origin point.

*Selling carrier* means an air carrier or foreign air carrier that provides or offers to provide air transportation and has control over the operational functions performed in providing that air transportation.

*Under Secretary* means the Under Secretary of Transportation for Security or the Under Secretary's designee.

### § 1510.5 Imposition of security service fees.

(a) The security service fee will be $2.50 per passenger enplanement. The security service fee is imposed only on passengers of direct air carriers and foreign air carrier described in § 1510.9(a). Passengers may not be charged for more than two enplanements per one-way trip or four enplanements per round trip.

(b) The security service fee will be imposed on all flight segments originating at an airport in the United States.

(c) The security service fee must be imposed on passengers who obtained the ticket for air transportation with a frequent flyer award, but may not be imposed on any other nonrevenue passengers.

(d) Passengers enplaning a flight segment outside of the United States are not subject to the security service fee for that enplanement.

### § 1510.7 Air transportation advertisements and solicitations.

A direct air carrier and foreign air carrier must identify the security service fee imposed by this part as ''September 11th Security Fee'' in all its advertisements and solicitations for air transportation.

### § 1510.9 Collection of security service fees.

(a) The following direct air carriers and foreign air carriers must collect security service fees from passengers enplaning:

(1) A scheduled passenger or public charter passenger operation with an aircraft having passenger seating configuration of more than 60 seats.

(2) A scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of less than 61 seats when passengers are enplaned from or deplaned into a sterile area.

(b) Direct air carriers and foreign air carriers must collect from each passenger, to the extent provided in § 1510.5, a security service fee on air transportation sold on or after February 1, 2002. The security service fee must be based on the air travel itinerary at the time the air transportation is sold. Any changes by the passenger to the itinerary that alter the number of enplanements are subject to additional collection or refund of the security service fee by the direct air carrier or foreign air carrier as appropriate. Direct air carriers and foreign air carriers are solely liable to TSA for additional security service fees imposed because of involuntary enplanement changes to the itinerary.

(c) Whether or not the security service fee is collected as required by this part, the direct air carrier or foreign air carrier selling the air transportation is solely liable to TSA for the fee and must remit the fee as required in § 1510.13.

(d) Direct air carriers and foreign air carriers may not collect security service fees not imposed by this part.

**§ 1510.11 Handling of security service fees.**

(a) Direct air carriers and foreign air carriers are responsible for the safekeeping of all security service fees from the time of collection to remittance.

(b) Security service fees collected by a direct air carrier or foreign air carrier are held in trust by that direct carrier for the beneficial interest of the United States in paying for the costs of providing civil aviation security services described in 49 U.S.C. 44940. The direct air carrier or foreign air carrier holds neither legal nor equitable interest in the security service fees except for the right to retain any accrued interest on the principal amounts collected pursuant to § 1510.13(b).

(c) Direct air carriers and foreign air carriers must account for security service fees separately, but the fees may be commingled with the carriers' other sources of revenue.

(d) Direct air carriers and foreign air carriers must disclose in their financial statements the existence and the amount of security service fee held in trust.

**§ 1510.13 Remittance of security service fees.**

(a) Each direct air carrier and foreign air carrier must remit all security service fees imposed each calendar month to TSA, as directed by the Under Secretary, by the last calendar day of the month following the imposition.

(b) Direct air carriers and foreign air carriers may retain any interest that accrues on the principal amounts collected between the date of collection and the date the fee is remitted to TSA in accordance with paragraph (a) of this section.

(c) Direct air carriers and foreign air carriers are prohibited from retaining any portion of the principal to offset the costs of collecting, handling, or remitting the passenger security service fees.

(d) Security service fees are payable to the ''Transportation Security Administration'' in U.S. currency and drawn on a U.S. bank.

(1) Fees of $1,000 or more must be remitted by electronic funds transfer.

(2) Fees under $1,000 may be remitted by electronic funds transfer, check, money order, wire transfer, or draft.

(e) Direct air carriers and foreign air carriers are responsible for paying any bank processing charges on the security service fees collected or remitted under this part when such charges are assessed on the U.S. government.

**§ 1510.15 Accounting and auditing requirements.**

(a) Direct air carriers and foreign air carriers must establish and maintain an accounting system to account for the security service fees imposed, collected, refunded and remitted. The accounting records must identify the airports at which the passengers were enplaned.

(b) Each direct air carrier and foreign air carrier that collects security services fees from more than 50,000 passengers annually must provide for an audit at least annually of its security service fee activities or accounts.

(c) Audits pursuant to paragraph (b) of this section must be performed by an independent certified public accountant and may be of limited scope. The accountant must express an opinion on the fairness and reasonableness of the direct air carrier's and foreign air carrier's procedures for collecting, holding, and remitting the fees. The opinion must also address whether the quarterly reports required in § 1510.17 fairly represent the net transactions in the security service fee accounts.

**§ 1510.17 Reporting requirements.**

(a) Each direct air carrier and foreign air carrier collecting security service fees must provide TSA with quarterly reports that provide an accounting of fees imposed, collected, refunded and remitted.

(b) Quarterly reports must state the direct air carrier or foreign air carrier involved, the total security service fee imposed, collected, refunded and remitted, the number of enplanements for which a fee was collected, the total number of frequent flyer and nonrevenue passengers, and the total number of enplanements for which the fee was not collected. The reports must explain why any fee imposed under this part was not collected.

(c) The report must be filed by the last day of the calendar month following the quarter in which the fees were imposed.

**§ 1510.19 Federal oversight.**

Direct air carriers and foreign air carriers must allow any authorized representative of the Under Secretary, the Secretary of Transportation, the Inspector General of the Department of Transportation, or the Comptroller General of the United States to audit or review any of its books and records and provide any other information necessary to verify that the security service fees were properly collected and remitted consistent with this part.

**§ 1510.21 Enforcement**

A direct air carrier's or foreign air carrier's failure to comply with the requirements 49 U.S.C. 44940 or the provisions of this part may be considered to be an unfair and deceptive practice in violation of 49 U.S.C. 41712 and may also result in a claim due the United States by the carrier collectable pursuant to 49 CFR part 89. These remedies are in addition to any others remedies provided by law.

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- Passenger flights in foreign air transportation to the United States; passenger and crew manifests requirements; published 12-31-01

Financial and accounting procedures:
- Harbor Maintenance Fee refunds and other claims against Customs; time limitation; published 7-2-01

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Income taxes:
- Financial transactions and nonfinancial trades or businesses currency transactions; information reporting to IRS and Financial Crimes Enforcement Network; published 12-31-01


## COMMENTS DUE NEXT WEEK


**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Oranges, grapefruit, tangerines, and tangelos grown in—
- Florida; comments due by 1-8-02; published 11-9-01 [FR 01-28201]

Tomatoes grown in—
- Florida; comments due by 1-8-02; published 11-9-01 [FR 01-28203]

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Plant-related quarantine, domestic:

Asian longhorned beetle; comments due by 1-7-02; published 11-8-01 [FR 01-28068]

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Caribbean, Gulf, and South Atlantic fisheries—

South Atlantic golden crab; comments due by 1-11-02; published 11-27-01 [FR 01-29494]

**DEFENSE DEPARTMENT**

Federal Acquisition Regulation (FAR):

Architect-engineer contractors; new consolidated form for selection; comments due by 1-8-02; published 12-20-01 [FR 01-31304]

**ENERGY DEPARTMENT**

**Federal Energy Regulatory Commission**

Electric utilities (Federal Power Act):

Standard generator interconnection agreements and procedures; comments due by 1-11-02; published 12-21-01 [FR 01-31442]

**ENVIRONMENTAL PROTECTION AGENCY**

Air pollution; standards of performance for new stationary sources:

Testing and monitoring provisions; amendments; comments due by 1-11-02; published 12-12-01 [FR 01-30367]

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Iowa; comments due by 1-11-02; published 12-12-01 [FR 01-30738]

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Iowa; comments due by 1-11-02; published 12-12-01 [FR 01-30739]

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Iowa; comments due by 1-11-02; published 12-12-01 [FR 01-30736]

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Iowa; comments due by 1-11-02; published 12-12-01 [FR 01-30737]

**ENVIRONMENTAL PROTECTION AGENCY**

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Vermont; comments due by 1-10-02; published 12-11-01 [FR 01-30583]

**ENVIRONMENTAL PROTECTION AGENCY**

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Vermont; comments due by 1-10-02; published 12-11-01 [FR 01-30584]

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Air quality implementation plans; approval and promulgation; various States:

Illinois; comments due by 1-11-02; published 12-12-01 [FR 01-30581]

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

Illinois; comments due by 1-11-02; published 12-12-01 [FR 01-30582]

**ENVIRONMENTAL PROTECTION AGENCY**

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Kansas; comments due by 1-11-02; published 12-12-01 [FR 01-30579]

**ENVIRONMENTAL PROTECTION AGENCY**

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**HEALTH AND HUMAN SERVICES DEPARTMENT**

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**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

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**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

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**PERSONNEL MANAGEMENT OFFICE**

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Commissary/exchange rates, survey frequency, and gradual reductions; comments due by 1-8-02; published 11-9-01 [FR 01-28057]

**PERSONNEL MANAGEMENT OFFICE**

Allowances and differentials:

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**Federal Aviation Administration**

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Class B airspace; comments due by 1-7-02; published 11-7-01 [FR 01-27999]

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**National Highway Traffic Safety Administration**

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Child restraint systems—
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**Internal Revenue Service**

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Consolidated return regulations—
Intercompany transactions; timing rules; comments due by 1-7-02; published 11-7-01 [FR 01-27970]

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**Thrift Supervision Office**

Savings and loan holding companies:
Authority to engage in financial activities; comments due by 1-10-02; published 12-7-01 [FR 01-30306]

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Adjudication; pensions, compensation, dependency, etc.:
Persian Gulf War veterans; undiagnosed illnesses compensation; comments due by 1-8-02; published 11-9-01 [FR 01-28158]

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

**H.R. 10/P.L. 107–90**
Railroad Retirement and Survivors' Improvement Act of 2001 (Dec. 21, 2001; 115 Stat. 878)

**H.R. 1230/P.L. 107–91**
Detroit River International Wildlife Refuge Establishment Act (Dec. 21, 2001; 115 Stat. 894)

**H.R. 1761/P.L. 107–92**
To designate the facility of the United States Postal Services located at 8588 Richmond Highway in Alexandria, Virginia, as the ''Herb Harris Post Office Building''. (Dec. 21, 2001; 115 Stat. 898)

**H.R. 2061/P.L. 107–93**
To amend the charter of Southeastern University of the District of Columbia. (Dec. 21, 2001; 115 Stat. 899)

**H.R. 2540/P.L. 107–94**
Veterans' Compensation Rate Amendments of 2001 (Dec. 21, 2001; 115 Stat. 900)

**H.R. 2716/P.L. 107–95**
Homeless Veterans Comprehensive Assistance Act of 2001 (Dec. 21, 2001; 115 Stat. 903)

**H.R. 2944/P.L. 107–96**
District of Columbia Appropriations Act, 2002 (Dec. 21, 2001; 115 Stat. 923)

**H.J. Res. 79/P.L. 107–97**
Making further continuing appropriations for the fiscal year 2002, and for other purposes. (Dec. 21, 2001; 115 Stat. 960)

**H.J. Res. 80/P.L. 107–98**
Appointing the day for the convening of the second session of the One Hundred Seventh Congress. (Dec. 21, 2001; 115 Stat. 961)

**S. 494/P.L. 107–99**
Zimbabwe Democracy and Economic Recovery Act of 2001 (Dec. 21, 2001; 115 Stat. 962)

**S. 1196/P.L. 107–100**

Small Business Investment Company Amendments Act of 2001 (Dec. 21, 2001; 115 Stat. 966)

**S.J. Res. 26/P.L. 107–101**

Providing for the appointment of Patricia Q. Stonesifer as a citizen regent of the Board of Regents of the Smithsonian Institution. (Dec. 21, 2001; 115 Stat. 973)

**Last List December 21, 2001**

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

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