1–7–02 Monday
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# Federal Register

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# Contents

**Federal Register**

Vol. 67, No. 4

Monday, January 7, 2002

**Agriculture Department**
*See* Animal and Plant Health Inspection Service

**Animal and Plant Health Inspection Service**
**RULES**
Exportation and importation of animals and animal products:
  Foot-and-mouth disease; disease status change—
    Japan, 649–651
  Horses from contagious equine meritis (CEM)-affected countries—
    Rhode Island; stallions and mares; receipt authorization, 649
**PROPOSED RULES**
Plant pest regulations update; risk-based criteria, 697

**Civil Rights Commission**
**NOTICES**
Meetings; Sunshine Act, 715

**Commerce Department**
*See* International Trade Administration
*See* National Institute of Standards and Technology
*See* National Oceanic and Atmospheric Administration

**Customs Service**
**NOTICES**
General program test:
  Post-entry amendment processing; extension, 768

**Energy Department**
*See* Federal Energy Regulatory Commission
**NOTICES**
Grants and cooperative agreements; availability, etc.:
  Active uranium and thorium processing sites; remedial action costs reimbursement, 718
  Advanced Liquid Natural Gas Onboard Storage Systems, 719
  Environmental Management Science Program, 719–725
  Historically black colleges and universities and other minority institutions; support of advanced fossil resource utilization research, 725–726
  Human Genome Program; ethical, legal, and social implications, 726–729

**Environmental Protection Agency**
**NOTICES**
Air pollution control:
  State operating permits programs—
    Texas, 732–736
Water pollution control:
  Sole source acquifer determinations—
    Glen Canyon Aquifer System, UT, 736–738
Water supply:
  Public water supply supervision program—
    Various States, 738–739

**Executive Office of the President**
*See* Presidential Documents

**Federal Aviation Administration**
**RULES**
Air traffic operating and flight rules, etc.:
  Criminal history records checks, 655
Airworthiness directives:
  Boeing, 651–653
  Turbomeca S.A., 653–655
**PROPOSED RULES**
Airworthiness directives:
  Pratt & Whitney, 697–702
Class D and Class E airspace, 702–704
Class E airspace, 704–707

**Federal Communications Commission**
**RULES**
Common carrier services:
  Telecommunications Act of 1996; implementation—
    Telecommunications service, equipment, and customer premises equipment; access by persons with disabilities, 678
Television broadcasting:
  Telecommunications Act of 1996; implementation—
    Sexually explicit adult video service programming scrambling; rules repealed, 678–680

**Federal Emergency Management Agency**
**RULES**
Flood elevation determinations:
  Various States, 675–678
**PROPOSED RULES**
Flood elevation determinations:
  Iowa, 709–710
**NOTICES**
Agency information collection activities:
  Submission for OMB review; comment request, 739–740
Disaster and emergency areas:
  Mississippi, 740

**Federal Energy Regulatory Commission**
**NOTICES**
Electric rate and corporate regulation filings:
  Montana-Dakota Utilities Co. et al., 729–731
Hydroelectric applications, 731–732
*Applications, hearings, determinations, etc.:*
  Citizens Energy Corp., 729

**Federal Highway Administration**
**NOTICES**
Environmental statements; notice of intent:
  Los Angeles County, CA, 761–762

**Federal Railroad Administration**
**NOTICES**
Exemption petitions, etc.:
  Durbin & Greenbrier Valley Railroad, Inc., 762
  Farmrail System, Inc., 762–763
  Kansas City Southern Railway Co., 763
  Massachusetts Bay Transportation Authority, 763–764
  Minnesota Northern Railroad, 764
  Ohio Central Railroad, 764–765
  Union Pacific Railroad Co., 765
  WATCO Companies, Inc., 765–766

**Fish and Wildlife Service**
RULES
Endangered and threatened species:
Florida manatee; additional protection areas, 680–696
NOTICES
Agency information collection activities:
Proposed collection; comment request, 743–744
Submission for OMB review; comment request, 744–755

**Foreign Assets Control Office**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 768–770

**Government Ethics Office**
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 740–741

**Health and Human Services Department**
*See* Substance Abuse and Mental Health Services Administration

**Indian Affairs Bureau**
NOTICES
Grants and cooperative agreements; availability, etc.:
Contract Support Funds; distribution and use method, 755–757

**Interior Department**
*See* Fish and Wildlife Service
*See* Indian Affairs Bureau
NOTICES
Committees; establishment, renewal, termination, etc.:
Battle of Midway National Memorial Planning Committee, 743

**Internal Revenue Service**
PROPOSED RULES
Excise taxes:
Liability for insurance premium, 707–709

**International Trade Administration**
NOTICES
Antidumping:
Fresh garlic from—
China, 715–716
Cheese quota; foreign government subsidies:
Annual list, 716–717

**International Trade Commission**
NOTICES
Import investigations:
Canary yellow self-stick repositionable note products, 757
Meetings; Sunshine Act, 757–758

**Justice Department**
NOTICES
Pollution control; consent judgments:
Arlington Valley Land Co., Inc., et al., 758
Specialty Minerals, Inc., et al., 758

**Labor Department**
*See* Occupational Safety and Health Administration
*See* Pension and Welfare Benefits Administration

**National Aeronautics and Space Administration**
NOTICES
Meetings:
U.S. Centennial of Flight Commission, 758–759

**National Highway Traffic Safety Administration**
PROPOSED RULES
Automotive fuel economy:
Alternative fuel vehicles; manufacturing incentives, 713–714
Motor vehicle safety standards:
Small business entities; economic impact, 710–713
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 766–767

**National Institute of Standards and Technology**
NOTICES
Meetings:
Manufacturing Extension Partnership National Advisory Board, 717

**National Labor Relations Board**
RULES
Stipulated records filed with Board or Board's Administrative Law Judges, 656–657
Unfair labor practice charges and representation petitions; extra copies filing requirements eliminated, 657–658

**National Oceanic and Atmospheric Administration**
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 717–718

**National Science Foundation**
NOTICES
Meetings:
Cyberinfrastructure Advisory Committee, 759

**Nuclear Regulatory Commission**
NOTICES
Meetings; Sunshine Act, 759

**Occupational Safety and Health Administration**
RULES
Procedural rules:
Standards advisory committees and OSHA National Advisory Committee; Labor Secretary's discretion to remove or replace members, 658–660

**Pension and Welfare Benefits Administration**
RULES
Employee Retirement Income Security Act:
Documents furnished to Labor Department Secretary on request; civil penalties assessment, 776–789
Plan and summary plan descriptions; superseded regulations removed and other technical amendments, 771–777

**Presidential Documents**
EXECUTIVE ORDERS
Government agencies and employees:
Rates of pay; adjustment (EO 13249), 639–648

**Public Health Service**
*See* Substance Abuse and Mental Health Services Administration

**Securities and Exchange Commission**
NOTICES
Meetings; Sunshine Act, 759–760
Securities:
Suspension of trading—
WSF Corp., 760

Self-regulatory organizations; proposed rule changes:
International Securities Exchange LLC, 760–761

**Substance Abuse and Mental Health Services Administration**
NOTICES
Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 741–743

**Surface Transportation Board**
NOTICES
Railroad services abandonment:
Norfolk Southern Railway Co., 767–768

**Transportation Department**
*See* Federal Aviation Administration
*See* Federal Highway Administration
*See* Federal Railroad Administration
*See* National Highway Traffic Safety Administration
*See* Surface Transportation Board

**Treasury Department**
*See* Customs Service
*See* Foreign Assets Control Office
*See* Internal Revenue Service

**Veterans Affairs Department**
RULES
Adult day health care of veterans in State homes; per diem payment mechanism, 660–675

---

**Separate Parts In This Issue**

**Part II**
Labor Department, Pension and Welfare Benefits Administration, 771–789

---

**Reader Aids**
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.
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## CFR PARTS AFFECTED IN THIS ISSUE

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


**3 CFR**

**Executive Orders:**
13182 (Superseded by EO 13249).....639
13249.....639

**7 CFR**

**Proposed Rules:**
330.....697

**9 CFR**
93.....649
94.....649

**14 CFR**
39 (2 documents).....651, 653
107.....655
108.....655

**Proposed Rules:**
39 (2 documents).....697, 700
71 (5 documents).....702, 703, 704, 705, 706

**26 CFR**

**Proposed Rules:**
46.....707

**29 CFR**
102 (2 documents).....656, 657
1912.....658
1912a.....658
2520 (2 documents).....772, 777
2560 (2 documents).....772, 777
2570.....777

**38 CFR**
52.....660

**44 CFR**
67.....675

**Proposed Rules:**
67.....709

**47 CFR**
6.....678
7.....678
76.....678

**49 CFR**

**Proposed Rules:**
529.....710
531.....710
533.....710
535.....710
537.....710
538 (2 documents).....710, 713
541.....710
542.....710
543.....710
544.....710
551.....710
552.....710
553.....710
554.....710
555.....710
556.....710
557.....710
564.....710
565.....710
566.....710
567.....710
568.....710
569.....710
570.....710
572.....710
573.....710
574.....710
575.....710
576.....710
577.....710
578.....710
579.....710

**50 CFR**
17.....680

Federal Register
Vol. 67, No. 4
Monday, January 7, 2002

# Presidential Documents

**Title 3—**

## The President

**Executive Order 13249 of December 28, 2001**

## Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the laws cited herein, it is hereby ordered as follows:

**Section 1.** *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303(a), are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

**Sec. 2.** *Senior Executive Service.* The rates of basic pay for senior executives in the Senior Executive Service, as adjusted under 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

**Sec. 3.** *Executive Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

**Sec. 4.** *Uniformed Services.* Pursuant to section 601 of S. 1438, the National Defense Authorization Act for Fiscal Year 2002 (which I signed into law on December 28, 2001), the rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

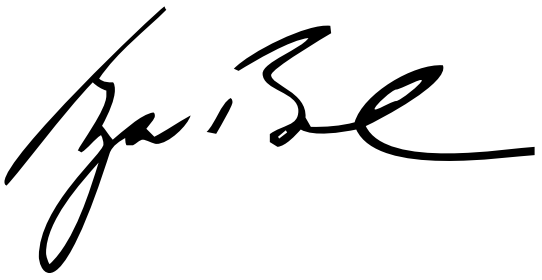
**Sec. 5.** *Locality-Based Comparability Payments.* (a) Pursuant to sections 5304 and 5304a of title 5, United States Code, and in accordance with section 646(a) of the Treasury and General Government Appropriations Act, 2002, Public Law 107–67, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the **Federal Register**.

**Sec. 6.** *Administrative Law Judges.* The rates of basic pay for administrative law judges, as adjusted under 5 U.S.C. 5372(b)(4), are set forth on Schedule 10 attached hereto and made a part hereof.

**Sec. 7.** *Effective Dates.* Schedule 8 is effective on January 1, 2002. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2002.

**Sec. 8.** *Prior Order Superseded.* Executive Order 13182 of December 23, 2000, is superseded.



THE WHITE HOUSE,
*December 28, 2001.*

Billing code 3195–01–P

**SCHEDULE 1--GENERAL SCHEDULE**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|
| $14,757 | $15,249 | $15,740 | $16,228 | $16,720 | $17,009 | $17,492 | $17,981 | $18,001 | $18,456 |
| 16,592 | 16,985 | 17,535 | 18,001 | 18,201 | 18,736 | 19,271 | 19,806 | 20,341 | 20,876 |
| 18,103 | 18,706 | 19,309 | 19,912 | 20,515 | 21,118 | 21,721 | 22,324 | 22,927 | 23,530 |
| 20,322 | 20,999 | 21,676 | 22,353 | 23,030 | 23,707 | 24,384 | 25,061 | 25,738 | 26,415 |
| 22,737 | 23,495 | 24,253 | 25,011 | 25,769 | 26,527 | 27,285 | 28,043 | 28,801 | 29,559 |
| 25,344 | 26,189 | 27,034 | 27,879 | 28,724 | 29,569 | 30,414 | 31,259 | 32,104 | 32,949 |
| 28,164 | 29,103 | 30,042 | 30,981 | 31,920 | 32,859 | 33,798 | 34,737 | 35,676 | 36,615 |
| 31,191 | 32,231 | 33,271 | 34,311 | 35,351 | 36,391 | 37,431 | 38,471 | 39,511 | 40,551 |
| 34,451 | 35,599 | 36,747 | 37,895 | 39,043 | 40,191 | 41,339 | 42,487 | 43,635 | 44,783 |
| 37,939 | 39,204 | 40,469 | 41,734 | 42,999 | 44,264 | 45,529 | 46,794 | 48,059 | 49,324 |
| 41,684 | 43,073 | 44,462 | 45,851 | 47,240 | 48,629 | 50,018 | 51,407 | 52,796 | 54,185 |
| 49,959 | 51,624 | 53,289 | 54,954 | 56,619 | 58,284 | 59,949 | 61,614 | 63,279 | 64,944 |
| 59,409 | 61,389 | 63,369 | 65,349 | 67,329 | 69,309 | 71,289 | 73,269 | 75,249 | 77,229 |
| 70,205 | 72,545 | 74,885 | 77,225 | 79,565 | 81,905 | 84,245 | 86,585 | 88,925 | 91,265 |
| 82,580 | 85,333 | 88,086 | 90,839 | 93,592 | 96,345 | 99,098 | 101,851 | 104,604 | 107,357 |

## SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

| Step | Class 1 | Class 2 | Class 3 | Class 4 | Class 5 | Class 6 | Class 7 | Class 8 | Class 9 |
|---|---|---|---|---|---|---|---|---|---|
| 1 | $82,580 | $66,914 | $54,220 | $43,934 | $35,599 | $31,825 | $28,450 | $25,434 | $22,737 |
| 2 | 85,057 | 68,921 | 55,847 | 45,252 | 36,667 | 32,780 | 29,304 | 26,197 | 23,419 |
| 3 | 87,609 | 70,989 | 57,522 | 46,610 | 37,767 | 33,763 | 30,183 | 26,983 | 24,122 |
| 4 | 90,237 | 73,119 | 59,248 | 48,008 | 38,900 | 34,776 | 31,088 | 27,792 | 24,845 |
| 5 | 92,945 | 75,312 | 61,025 | 49,448 | 40,067 | 35,819 | 32,021 | 28,626 | 25,591 |
| 6 | 95,733 | 77,572 | 62,856 | 50,932 | 41,269 | 36,894 | 32,981 | 29,485 | 26,358 |
| 7 | 98,605 | 79,899 | 64,742 | 52,459 | 42,507 | 38,001 | 33,971 | 30,370 | 27,149 |
| 8 | 101,563 | 82,296 | 66,684 | 54,033 | 43,782 | 39,141 | 34,990 | 31,281 | 27,964 |
| 9 | 104,610 | 84,765 | 68,684 | 55,654 | 45,096 | 40,315 | 36,040 | 32,219 | 28,803 |
| 10 | 107,357 | 87,308 | 70,745 | 57,324 | 46,449 | 41,524 | 37,121 | 33,186 | 29,667 |
| 11 | 107,357 | 89,927 | 72,867 | 59,044 | 47,842 | 42,770 | 38,234 | 34,181 | 30,557 |
| 12 | 107,357 | 92,625 | 75,053 | 60,815 | 49,277 | 44,053 | 39,381 | 35,207 | 31,473 |
| 13 | 107,357 | 95,403 | 77,305 | 62,639 | 50,756 | 45,375 | 40,563 | 36,263 | 32,418 |
| 14 | 107,357 | 98,265 | 79,624 | 64,519 | 52,278 | 46,736 | 41,780 | 37,351 | 33,390 |

**SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES**
**DEPARTMENT OF VETERANS AFFAIRS**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

Schedule for the Office of the Under Secretary for Health
(38 U.S.C. 7306)*

| | | |
|---|---|---|
| Deputy Under Secretary for Health | | $140,243 ** |
| Associate Deputy Under Secretary for Health | | 134,327 *** |
| Assistant Under Secretaries for Health | | 130,367 *** |
| | Minimum | Maximum |
| Medical Directors | $111,230 | $126,064 *** |
| Service Directors | 96,851 | 120,282 |
| Director, National Center for Preventive Health | 82,580 | 120,282 |

Physician and Dentist Schedule

| | | |
|---|---|---|
| Director Grade | $96,851 | $120,282 |
| Executive Grade | 89,432 | 113,978 |
| Chief Grade | 82,580 | 107,357 |
| Senior Grade | 70,205 | 91,265 |
| Intermediate Grade | 59,409 | 77,229 |
| Full Grade | 49,959 | 64,944 |
| Associate Grade | 41,684 | 54,185 |

Clinical Podiatrist and Optometrist Schedule

| | | |
|---|---|---|
| Chief Grade | $82,580 | $107,357 |
| Senior Grade | 70,205 | 91,265 |
| Intermediate Grade | 59,409 | 77,229 |
| Full Grade | 49,959 | 64,944 |
| Associate Grade | 41,684 | 54,185 |

Physician Assistant and Expanded-Function Dental Auxiliary Schedule ****

| | | |
|---|---|---|
| Director Grade | $82,580 | $107,357 |
| Assistant Director Grade | 70,205 | 91,265 |
| Chief Grade | 59,409 | 77,229 |
| Senior Grade | 49,959 | 64,944 |
| Intermediate Grade | 41,684 | 54,185 |
| Full Grade | 34,451 | 44,783 |
| Associate Grade | 29,646 | 38,538 |
| Junior Grade | 25,344 | 32,949 |

---

* This schedule does not apply to the Assistant Under Secretary for Nursing Programs or the Director of Nursing Services. Pay for these positions is set by the Under Secretary for Health under 38 U.S.C. 7451.

** Pursuant to section 7404(d)(1) of title 38, United States Code, the rate of basic pay payable to this employee is limited to the rate for level IV of the Executive Schedule, which is $130,000.

*** Pursuant to section 7404(d)(2) of title 38, United States Code, the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $121,600.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b) as in effect on August 14, 1990, with subsequent adjustments.

**SCHEDULE 4--SENIOR EXECUTIVE SERVICE**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

| | |
|---|---|
| ES-1 | $113,000 |
| ES-2 | 118,300 |
| ES-3 | 123,700 |
| ES-4 | 129,800 |
| ES-5 | 130,000 |
| ES-6 | 130,000 |

**SCHEDULE 5--EXECUTIVE SCHEDULE**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

| | |
|---|---|
| level I | $166,700 |
| level II | 150,000 |
| level III | 138,200 |
| level IV | 130,000 |
| level V | 121,600 |

**SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

| | |
|---|---|
| Vice President | $192,600 |
| Senators | 150,000 |
| Members of the House of Representatives | 150,000 |
| Delegates to the House of Representatives | 150,000 |
| Resident Commissioner from Puerto Rico | 150,000 |
| President pro tempore of the Senate | 166,700 |
| Majority leader and minority leader of the Senate | 166,700 |
| Majority leader and minority leader of the House of Representatives | 166,700 |
| Speaker of the House of Representatives | 192,600 |

**SCHEDULE 7--JUDICIAL SALARIES**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

| | |
|---|---|
| Chief Justice of the United States | $192,600 |
| Associate Justices of the Supreme Court | 184,400 |
| Circuit Judges | 159,100 |
| District Judges | 150,000 |
| Judges of the Court of International Trade | 150,000 |

**SCHEDULE 8–PAY OF THE UNIFORMED SERVICES**
(Effective on January 1, 2002)

**Part I–MONTHLY BASIC PAY**

**YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)**

| Pay Grade | 2 or less | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **COMMISSIONED OFFICERS** | | | | | | | | | | | | | | | |
| O-10 ** | - | - | - | - | - | - | - | - | - | - | - | $11,601.90* | $11,659.20* | $11,901.30* | $12,324.00* |
| O-9 | - | - | - | - | - | - | - | - | - | - | - | 10,147.50 | 10,293.60 | 10,504.80 | 10,873.80 |
| O-8 | $7,180.20 | $7,415.40 | $7,571.10 | $7,614.90 | $7,809.30 | $8,135.10 | $8,210.70 | $8,519.70 | $8,608.50 | $8,874.30 | $9,259.50 | 9,614.70 | 9,852.00 | 9,852.00 | 9,852.00 |
| O-7 | 5,966.40 | 6,371.70 | 6,371.70 | 6,418.20 | 6,657.90 | 6,840.30 | 7,051.20 | 7,261.80 | 7,472.70 | 8,135.10 | 8,694.90 | 8,694.90 | 8,694.90 | 8,694.90 | 8,738.70 |
| O-6 | 4,422.00 | 4,857.90 | 5,176.80 | 5,176.80 | 5,196.60 | 5,418.90 | 5,448.60 | 5,448.60 | 5,628.60 | 6,305.70 | 6,627.00 | 6,948.30 | 7,131.00 | 7,316.10 | 7,675.20 |
| O-5 | 3,537.00 | 4,152.60 | 4,440.30 | 4,494.30 | 4,673.10 | 4,673.10 | 4,813.50 | 5,073.30 | 5,413.50 | 5,755.80 | 5,919.00 | 6,079.80 | 6,262.80 | 6,262.80 | 6,262.80 |
| O-4 | 3,023.70 | 3,681.90 | 3,927.60 | 3,982.50 | 4,210.50 | 4,395.90 | 4,696.20 | 4,930.20 | 5,092.50 | 5,255.70 | 5,310.60 | 5,310.60 | 5,310.60 | 5,310.60 | 5,310.60 |
| O-3 *** | 2,796.60 | 3,170.40 | 3,421.80 | 3,698.70 | 3,875.70 | 4,070.10 | 4,232.40 | 4,441.20 | 4,549.50 | 4,549.50 | 4,549.50 | 4,549.50 | 4,549.50 | 4,549.50 | 4,549.50 |
| O-2 *** | 2,416.20 | 2,751.90 | 3,169.50 | 3,276.30 | 3,344.10 | 3,344.10 | 3,344.10 | 3,344.10 | 3,344.10 | 3,344.10 | 3,344.10 | 3,344.10 | 3,344.10 | 3,344.10 | 3,344.10 |
| O-1 *** | 2,097.60 | 2,183.10 | 2,638.50 | 2,638.50 | 2,638.50 | 2,638.50 | 2,638.50 | 2,638.50 | 2,638.50 | 2,638.50 | 2,638.50 | 2,638.50 | 2,638.50 | 2,638.50 | 2,638.50 |
| **COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER** | | | | | | | | | | | | | | | |
| O-3E | - | - | - | $3,698.70 | $3,875.70 | $4,070.10 | $4,232.40 | $4,441.20 | $4,617.00 | $4,717.50 | $4,855.20 | $4,855.20 | $4,855.20 | $4,855.20 | $4,855.20 |
| O-2E | - | - | - | 3,276.30 | 3,344.10 | 3,450.30 | 3,630.00 | 3,768.90 | 3,872.40 | 3,872.40 | 3,872.40 | 3,872.40 | 3,872.40 | 3,872.40 | 3,872.40 |
| O-1E | - | - | - | 2,638.50 | 2,818.20 | 2,922.30 | 3,028.50 | 3,133.20 | 3,276.30 | 3,276.30 | 3,276.30 | 3,276.30 | 3,276.30 | 3,276.30 | 3,276.30 |

* Basic pay for these officers is limited to the rate of basic pay for level III of the Executive Schedule, which is $11,516.70 per month.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is calculated to be $13,598.10 per month, regardless of cumulative years of service computed under section 205 of title 37, United States Code. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level III of the Executive Schedule, which is $11,516.70 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**SCHEDULE 8–PAY OF THE UNIFORMED SERVICES (PAGE 2)**

**YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)**

| Pay Grade | 2 or less | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **WARRANT OFFICERS** | | | | | | | | | | | | | | | |
| W-5 | - | - | - | - | - | - | - | - | - | - | - | $4,965.60 | $5,136.00 | $5,307.00 | $5,478.60 |
| W-4 | $2,889.60 | $3,108.60 | $3,198.00 | $3,285.90 | $3,437.10 | $3,586.50 | $3,737.70 | $3,885.30 | $4,038.00 | $4,184.40 | $4,334.40 | 4,480.80 | 4,632.60 | 4,782.00 | 4,935.30 |
| W-3 | 2,638.80 | 2,862.00 | 2,862.00 | 2,898.90 | 3,017.40 | 3,152.40 | 3,330.90 | 3,439.50 | 3,558.30 | 3,693.90 | 3,828.60 | 3,963.60 | 4,098.30 | 4,233.30 | 4,368.90 |
| W-2 | 2,321.40 | 2,454.00 | 2,569.80 | 2,654.10 | 2,726.40 | 2,875.20 | 2,984.40 | 3,093.90 | 3,200.40 | 3,318.00 | 3,438.90 | 3,559.80 | 3,680.10 | 3,801.30 | 3,801.30 |
| W-1 | 2,049.90 | 2,217.60 | 2,330.10 | 2,402.70 | 2,511.90 | 2,624.70 | 2,737.80 | 2,850.00 | 2,963.70 | 3,077.10 | 3,189.90 | 3,275.10 | 3,275.10 | 3,275.10 | 3,275.10 |
| **ENLISTED MEMBERS** | | | | | | | | | | | | | | | |
| E-9 * | - | - | - | - | - | - | $3,423.90 | $3,501.30 | $3,599.40 | $3,714.60 | $3,830.40 | $3,944.10 | $4,098.30 | $4,251.30 | $4,467.00 |
| E-8 | - | - | - | - | - | $2,858.10 | 2,940.60 | 3,017.70 | 3,110.10 | 3,210.30 | 3,314.70 | 3,420.30 | 3,573.00 | 3,724.80 | 3,937.80 |
| E-7 | $1,986.90 | $2,169.00 | $2,251.50 | $2,332.50 | $2,417.40 | 2,562.90 | 2,645.10 | 2,726.40 | 2,808.00 | 2,892.60 | 2,975.10 | 3,057.30 | 3,200.40 | 3,292.80 | 3,526.80 |
| E-6 | 1,701.00 | 1,870.80 | 1,953.60 | 2,033.70 | 2,117.40 | 2,254.50 | 2,337.30 | 2,417.40 | 2,499.30 | 2,558.10 | 2,602.80 | 2,602.80 | 2,602.80 | 2,602.80 | 2,602.80 |
| E-5 | 1,561.50 | 1,665.30 | 1,745.70 | 1,828.50 | 1,912.80 | 2,030.10 | 2,110.20 | 2,193.30 | 2,193.30 | 2,193.30 | 2,193.30 | 2,193.30 | 2,193.30 | 2,193.30 | 2,193.30 |
| E-4 | 1,443.60 | 1,517.70 | 1,599.60 | 1,680.30 | 1,752.30 | 1,752.30 | 1,752.30 | 1,752.30 | 1,752.30 | 1,752.30 | 1,752.30 | 1,752.30 | 1,752.30 | 1,752.30 | 1,752.30 |
| E-3 | 1,303.50 | 1,385.40 | 1,468.50 | 1,468.50 | 1,468.50 | 1,468.50 | 1,468.50 | 1,468.50 | 1,468.50 | 1,468.50 | 1,468.50 | 1,468.50 | 1,468.50 | 1,468.50 | 1,468.50 |
| E-2 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 |
| E-1 ** | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 |
| E-1 *** | 1,022.70 | - | - | - | - | - | - | - | - | - | - | - | - | - | - |

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $5,382.90 per month, regardless of cumulative years of service under section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

## SCHEDULE 8–PAY OF THE UNIFORMED SERVICES (PAGE 3)

### Part II–RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c) of title 37, United States Code, is $734.10.

Note: As a result of the enactment of sections 602-694 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

**SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

| Locality Pay Area[1] | Rate |
|---|---|
| Atlanta, GA | 9.74% |
| Boston-Worcester-Lawrence, MA-NH-ME-CT-RI | 13.57% |
| Chicago-Gary-Kenosha, IL-IN-WI | 14.58% |
| Cincinnati-Hamilton, OH-KY-IN | 12.09% |
| Cleveland-Akron, OH | 10.33% |
| Columbus, OH | 10.70% |
| Dallas-Fort Worth, TX | 10.90% |
| Dayton-Springfield, OH | 9.62% |
| Denver-Boulder-Greeley, CO | 13.34% |
| Detroit-Ann Arbor-Flint, MI | 14.71% |
| Hartford, CT | 14.11% |
| Houston-Galveston-Brazoria, TX | 18.61% |
| Huntsville, AL | 9.08% |
| Indianapolis, IN | 8.85% |
| Kansas City, MO-KS | 9.28% |
| Los Angeles-Riverside-Orange County, CA | 16.05% |
| Miami-Fort Lauderdale, FL | 12.45% |
| Milwaukee-Racine, WI | 10.05% |
| Minneapolis-St. Paul, MN-WI | 11.56% |
| New York-Northern New Jersey-Long Island, NY-NJ-CT-PA | 15.23% |
| Orlando, FL | 8.67% |
| Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD | 12.11% |
| Pittsburgh, PA | 9.52% |
| Portland-Salem, OR-WA | 11.64% |
| Richmond-Petersburg, VA | 9.67% |
| Sacramento-Yolo, CA | 11.99% |
| St. Louis, MO-IL | 8.98% |
| San Diego, CA | 12.70% |
| San Francisco-Oakland-San Jose, CA | 19.04% |
| Seattle-Tacoma-Bremerton, WA | 11.77% |
| Washington-Baltimore, DC-MD-VA-WV | 11.48% |
| Rest of U.S. | 8.64% |

**SCHEDULE 10-ADMINISTRATIVE LAW JUDGES**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

| | |
|---|---|
| AL-3/A | $ 86,500 |
| AL-3/B | 93,100 |
| AL-3/C | 99,800 |
| AL-3/D | 106,500 |
| AL-3/E | 113,100 |
| AL-3/F | 119,700 |
| AL-2 | 126,500 |
| AL-1 | 130,000 |

[1]Locality Pay Areas are defined in 5 CFR 531.603.

[FR Doc. 02–448

Filed 1–4–02; 8:45 am]

Billing code 3195–01–C

Federal Register
Vol. 67, No. 4
Monday, January 7, 2002

# Presidential Documents

**Title 3—**

## The President

**Executive Order 13249 of December 28, 2001**

## Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the laws cited herein, it is hereby ordered as follows:

**Section 1.** *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303(a), are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

**Sec. 2.** *Senior Executive Service.* The rates of basic pay for senior executives in the Senior Executive Service, as adjusted under 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

**Sec. 3.** *Executive Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

**Sec. 4.** *Uniformed Services.* Pursuant to section 601 of S. 1438, the National Defense Authorization Act for Fiscal Year 2002 (which I signed into law on December 28, 2001), the rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

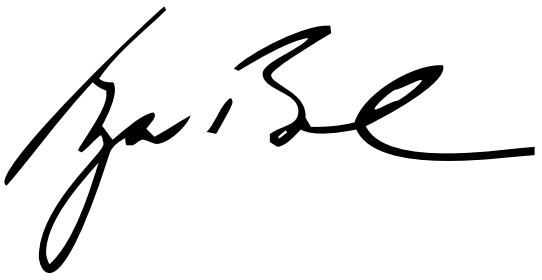
**Sec. 5.** *Locality-Based Comparability Payments.* (a) Pursuant to sections 5304 and 5304a of title 5, United States Code, and in accordance with section 646(a) of the Treasury and General Government Appropriations Act, 2002, Public Law 107–67, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the **Federal Register**.

**Sec. 6.** *Administrative Law Judges.* The rates of basic pay for administrative law judges, as adjusted under 5 U.S.C. 5372(b)(4), are set forth on Schedule 10 attached hereto and made a part hereof.

**Sec. 7.** *Effective Dates.* Schedule 8 is effective on January 1, 2002. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2002.

**Sec. 8.** *Prior Order Superseded.* Executive Order 13182 of December 23, 2000, is superseded.



THE WHITE HOUSE,
*December 28, 2001.*

Billing code 3195–01–P

**SCHEDULE 1--GENERAL SCHEDULE**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|
| $14,757 | $15,249 | $15,740 | $16,228 | $16,720 | $17,009 | $17,492 | $17,981 | $18,001 | $18,456 |
| 16,592 | 16,985 | 17,535 | 18,001 | 18,201 | 18,736 | 19,271 | 19,806 | 20,341 | 20,876 |
| 18,103 | 18,706 | 19,309 | 19,912 | 20,515 | 21,118 | 21,721 | 22,324 | 22,927 | 23,530 |
| 20,322 | 20,999 | 21,676 | 22,353 | 23,030 | 23,707 | 24,384 | 25,061 | 25,738 | 26,415 |
| 22,737 | 23,495 | 24,253 | 25,011 | 25,769 | 26,527 | 27,285 | 28,043 | 28,801 | 29,559 |
| 25,344 | 26,189 | 27,034 | 27,879 | 28,724 | 29,569 | 30,414 | 31,259 | 32,104 | 32,949 |
| 28,164 | 29,103 | 30,042 | 30,981 | 31,920 | 32,859 | 33,798 | 34,737 | 35,676 | 36,615 |
| 31,191 | 32,231 | 33,271 | 34,311 | 35,351 | 36,391 | 37,431 | 38,471 | 39,511 | 40,551 |
| 34,451 | 35,599 | 36,747 | 37,895 | 39,043 | 40,191 | 41,339 | 42,487 | 43,635 | 44,783 |
| 37,939 | 39,204 | 40,469 | 41,734 | 42,999 | 44,264 | 45,529 | 46,794 | 48,059 | 49,324 |
| 41,684 | 43,073 | 44,462 | 45,851 | 47,240 | 48,629 | 50,018 | 51,407 | 52,796 | 54,185 |
| 49,959 | 51,624 | 53,289 | 54,954 | 56,619 | 58,284 | 59,949 | 61,614 | 63,279 | 64,944 |
| 59,409 | 61,389 | 63,369 | 65,349 | 67,329 | 69,309 | 71,289 | 73,269 | 75,249 | 77,229 |
| 70,205 | 72,545 | 74,885 | 77,225 | 79,565 | 81,905 | 84,245 | 86,585 | 88,925 | 91,265 |
| 82,580 | 85,333 | 88,086 | 90,839 | 93,592 | 96,345 | 99,098 | 101,851 | 104,604 | 107,357 |

## SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

| Step | Class 1 | Class 2 | Class 3 | Class 4 | Class 5 | Class 6 | Class 7 | Class 8 | Class 9 |
|---|---|---|---|---|---|---|---|---|---|
| 1 | $82,580 | $66,914 | $54,220 | $43,934 | $35,599 | $31,825 | $28,450 | $25,434 | $22,737 |
| 2 | 85,057 | 68,921 | 55,847 | 45,252 | 36,667 | 32,780 | 29,304 | 26,197 | 23,419 |
| 3 | 87,609 | 70,989 | 57,522 | 46,610 | 37,767 | 33,763 | 30,183 | 26,983 | 24,122 |
| 4 | 90,237 | 73,119 | 59,248 | 48,008 | 38,900 | 34,776 | 31,088 | 27,792 | 24,845 |
| 5 | 92,945 | 75,312 | 61,025 | 49,448 | 40,067 | 35,819 | 32,021 | 28,626 | 25,591 |
| 6 | 95,733 | 77,572 | 62,856 | 50,932 | 41,269 | 36,894 | 32,981 | 29,485 | 26,358 |
| 7 | 98,605 | 79,899 | 64,742 | 52,459 | 42,507 | 38,001 | 33,971 | 30,370 | 27,149 |
| 8 | 101,563 | 82,296 | 66,684 | 54,033 | 43,782 | 39,141 | 34,990 | 31,281 | 27,964 |
| 9 | 104,610 | 84,765 | 68,684 | 55,654 | 45,096 | 40,315 | 36,040 | 32,219 | 28,803 |
| 10 | 107,357 | 87,308 | 70,745 | 57,324 | 46,449 | 41,524 | 37,121 | 33,186 | 29,667 |
| 11 | 107,357 | 89,927 | 72,867 | 59,044 | 47,842 | 42,770 | 38,234 | 34,181 | 30,557 |
| 12 | 107,357 | 92,625 | 75,053 | 60,815 | 49,277 | 44,053 | 39,381 | 35,207 | 31,473 |
| 13 | 107,357 | 95,403 | 77,305 | 62,639 | 50,756 | 45,375 | 40,563 | 36,263 | 32,418 |
| 14 | 107,357 | 98,265 | 79,624 | 64,519 | 52,278 | 46,736 | 41,780 | 37,351 | 33,390 |

**SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES**
**DEPARTMENT OF VETERANS AFFAIRS**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

Schedule for the Office of the Under Secretary for Health
(38 U.S.C. 7306)*

| | | |
|---|---|---|
| Deputy Under Secretary for Health | | $140,243 ** |
| Associate Deputy Under Secretary for Health | | 134,327 *** |
| Assistant Under Secretaries for Health | | 130,367 *** |
| | Minimum | Maximum |
| Medical Directors | $111,230 | $126,064 *** |
| Service Directors | 96,851 | 120,282 |
| Director, National Center for Preventive Health | 82,580 | 120,282 |

Physician and Dentist Schedule

| | | |
|---|---|---|
| Director Grade | $96,851 | $120,282 |
| Executive Grade | 89,432 | 113,978 |
| Chief Grade | 82,580 | 107,357 |
| Senior Grade | 70,205 | 91,265 |
| Intermediate Grade | 59,409 | 77,229 |
| Full Grade | 49,959 | 64,944 |
| Associate Grade | 41,684 | 54,185 |

Clinical Podiatrist and Optometrist Schedule

| | | |
|---|---|---|
| Chief Grade | $82,580 | $107,357 |
| Senior Grade | 70,205 | 91,265 |
| Intermediate Grade | 59,409 | 77,229 |
| Full Grade | 49,959 | 64,944 |
| Associate Grade | 41,684 | 54,185 |

Physician Assistant and Expanded-Function Dental Auxiliary Schedule ****

| | | |
|---|---|---|
| Director Grade | $82,580 | $107,357 |
| Assistant Director Grade | 70,205 | 91,265 |
| Chief Grade | 59,409 | 77,229 |
| Senior Grade | 49,959 | 64,944 |
| Intermediate Grade | 41,684 | 54,185 |
| Full Grade | 34,451 | 44,783 |
| Associate Grade | 29,646 | 38,538 |
| Junior Grade | 25,344 | 32,949 |

---

* This schedule does not apply to the Assistant Under Secretary for Nursing Programs or the Director of Nursing Services. Pay for these positions is set by the Under Secretary for Health under 38 U.S.C. 7451.

** Pursuant to section 7404(d)(1) of title 38, United States Code, the rate of basic pay payable to this employee is limited to the rate for level IV of the Executive Schedule, which is $130,000.

*** Pursuant to section 7404(d)(2) of title 38, United States Code, the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $121,600.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b) as in effect on August 14, 1990, with subsequent adjustments.

**SCHEDULE 4--SENIOR EXECUTIVE SERVICE**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

| | |
|---|---|
| ES-1 | $113,000 |
| ES-2 | 118,300 |
| ES-3 | 123,700 |
| ES-4 | 129,800 |
| ES-5 | 130,000 |
| ES-6 | 130,000 |

**SCHEDULE 5--EXECUTIVE SCHEDULE**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

| | |
|---|---|
| level I | $166,700 |
| level II | 150,000 |
| level III | 138,200 |
| level IV | 130,000 |
| level V | 121,600 |

**SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

| | |
|---|---|
| Vice President | $192,600 |
| Senators | 150,000 |
| Members of the House of Representatives | 150,000 |
| Delegates to the House of Representatives | 150,000 |
| Resident Commissioner from Puerto Rico | 150,000 |
| President pro tempore of the Senate | 166,700 |
| Majority leader and minority leader of the Senate | 166,700 |
| Majority leader and minority leader of the House of Representatives | 166,700 |
| Speaker of the House of Representatives | 192,600 |

**SCHEDULE 7--JUDICIAL SALARIES**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

| | |
|---|---|
| Chief Justice of the United States | $192,600 |
| Associate Justices of the Supreme Court | 184,400 |
| Circuit Judges | 159,100 |
| District Judges | 150,000 |
| Judges of the Court of International Trade | 150,000 |

**SCHEDULE 8–PAY OF THE UNIFORMED SERVICES**
(Effective on January 1, 2002)

**Part I–MONTHLY BASIC PAY**

**YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)**

| Pay Grade | 2 or less | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **COMMISSIONED OFFICERS** | | | | | | | | | | | | | | | |
| O-10 ** | - | - | - | - | - | - | - | - | - | - | - | $11,601.90* | $11,659.20* | $11,901.30* | $12,324.00* |
| O-9 | - | - | - | - | - | - | - | - | - | - | - | 10,147.50 | 10,293.60 | 10,504.80 | 10,873.80 |
| O-8 | $7,180.20 | $7,415.40 | $7,571.10 | $7,614.90 | $7,809.30 | $8,135.10 | $8,210.70 | $8,519.70 | $8,608.50 | $8,874.30 | $9,259.50 | 9,614.70 | 9,852.00 | 9,852.00 | 9,852.00 |
| O-7 | 5,966.40 | 6,371.70 | 6,371.70 | 6,418.20 | 6,657.90 | 6,840.30 | 7,051.20 | 7,261.80 | 7,472.70 | 8,135.10 | 8,694.90 | 8,694.90 | 8,694.90 | 8,694.90 | 8,738.70 |
| O-6 | 4,422.00 | 4,857.90 | 5,176.80 | 5,176.80 | 5,196.60 | 5,418.90 | 5,448.60 | 5,448.60 | 5,628.60 | 6,305.70 | 6,627.00 | 6,948.30 | 7,131.00 | 7,316.10 | 7,675.20 |
| O-5 | 3,537.00 | 4,152.60 | 4,440.30 | 4,494.30 | 4,673.10 | 4,673.10 | 4,813.50 | 5,073.30 | 5,413.50 | 5,755.80 | 5,919.00 | 6,079.80 | 6,262.80 | 6,262.80 | 6,262.80 |
| O-4 | 3,023.70 | 3,681.90 | 3,927.60 | 3,982.50 | 4,210.50 | 4,395.90 | 4,696.20 | 4,930.20 | 5,092.50 | 5,255.70 | 5,310.60 | 5,310.60 | 5,310.60 | 5,310.60 | 5,310.60 |
| O-3 *** | 2,796.60 | 3,170.40 | 3,421.80 | 3,698.70 | 3,875.70 | 4,070.10 | 4,232.40 | 4,441.20 | 4,549.50 | 4,549.50 | 4,549.50 | 4,549.50 | 4,549.50 | 4,549.50 | 4,549.50 |
| O-2 *** | 2,416.20 | 2,751.90 | 3,169.50 | 3,276.30 | 3,344.10 | 3,344.10 | 3,344.10 | 3,344.10 | 3,344.10 | 3,344.10 | 3,344.10 | 3,344.10 | 3,344.10 | 3,344.10 | 3,344.10 |
| O-1 *** | 2,097.60 | 2,183.10 | 2,638.50 | 2,638.50 | 2,638.50 | 2,638.50 | 2,638.50 | 2,638.50 | 2,638.50 | 2,638.50 | 2,638.50 | 2,638.50 | 2,638.50 | 2,638.50 | 2,638.50 |
| **COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER** | | | | | | | | | | | | | | | |
| O-3E | - | - | - | $3,698.70 | $3,875.70 | $4,070.10 | $4,232.40 | $4,441.20 | $4,617.00 | $4,717.50 | $4,855.20 | $4,855.20 | $4,855.20 | $4,855.20 | $4,855.20 |
| O-2E | - | - | - | 3,276.30 | 3,344.10 | 3,450.30 | 3,630.00 | 3,768.90 | 3,872.40 | 3,872.40 | 3,872.40 | 3,872.40 | 3,872.40 | 3,872.40 | 3,872.40 |
| O-1E | - | - | - | 2,638.50 | 2,818.20 | 2,922.30 | 3,028.50 | 3,133.20 | 3,276.30 | 3,276.30 | 3,276.30 | 3,276.30 | 3,276.30 | 3,276.30 | 3,276.30 |

* Basic pay for these officers is limited to the rate of basic pay for level III of the Executive Schedule, which is $11,516.70 per month.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is calculated to be $13,598.10 per month, regardless of cumulative years of service computed under section 205 of title 37, United States Code. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level III of the Executive Schedule, which is $11,516.70 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**SCHEDULE 8–PAY OF THE UNIFORMED SERVICES (PAGE 2)**

**YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)**

| Pay Grade | 2 or less | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **WARRANT OFFICERS** | | | | | | | | | | | | | | | |
| W-5 | - | - | - | - | - | - | - | - | - | - | - | $4,965.60 | $5,136.00 | $5,307.00 | $5,478.60 |
| W-4 | $2,889.60 | $3,108.60 | $3,198.00 | $3,285.90 | $3,437.10 | $3,586.50 | $3,737.70 | $3,885.30 | $4,038.00 | $4,184.40 | $4,334.40 | 4,480.80 | 4,632.60 | 4,782.00 | 4,935.30 |
| W-3 | 2,638.80 | 2,862.00 | 2,862.00 | 2,898.90 | 3,017.40 | 3,152.40 | 3,330.90 | 3,439.50 | 3,558.30 | 3,693.90 | 3,828.60 | 3,963.60 | 4,098.30 | 4,233.30 | 4,368.90 |
| W-2 | 2,321.40 | 2,454.00 | 2,569.80 | 2,654.10 | 2,726.40 | 2,875.20 | 2,984.40 | 3,093.90 | 3,200.40 | 3,318.00 | 3,438.90 | 3,559.80 | 3,680.10 | 3,801.30 | 3,801.30 |
| W-1 | 2,049.90 | 2,217.60 | 2,330.10 | 2,402.70 | 2,511.90 | 2,624.70 | 2,737.80 | 2,850.00 | 2,963.70 | 3,077.10 | 3,189.90 | 3,275.10 | 3,275.10 | 3,275.10 | 3,275.10 |
| **ENLISTED MEMBERS** | | | | | | | | | | | | | | | |
| E-9 * | - | - | - | - | - | - | $3,423.90 | $3,501.30 | $3,599.40 | $3,714.60 | $3,830.40 | $3,944.10 | $4,098.30 | $4,251.30 | $4,467.00 |
| E-8 | - | - | - | - | - | $2,858.10 | 2,940.60 | 3,017.70 | 3,110.10 | 3,210.30 | 3,314.70 | 3,420.30 | 3,573.00 | 3,724.80 | 3,937.80 |
| E-7 | $1,986.90 | $2,169.00 | $2,251.50 | $2,332.50 | $2,417.40 | 2,562.90 | 2,645.10 | 2,726.40 | 2,808.00 | 2,892.60 | 2,975.10 | 3,057.30 | 3,200.40 | 3,292.80 | 3,526.80 |
| E-6 | 1,701.00 | 1,870.80 | 1,953.60 | 2,033.70 | 2,117.40 | 2,254.50 | 2,337.30 | 2,417.40 | 2,499.30 | 2,558.10 | 2,602.80 | 2,602.80 | 2,602.80 | 2,602.80 | 2,602.80 |
| E-5 | 1,561.50 | 1,665.30 | 1,745.70 | 1,828.50 | 1,912.80 | 2,030.10 | 2,110.20 | 2,193.30 | 2,193.30 | 2,193.30 | 2,193.30 | 2,193.30 | 2,193.30 | 2,193.30 | 2,193.30 |
| E-4 | 1,443.60 | 1,517.70 | 1,599.60 | 1,680.30 | 1,752.30 | 1,752.30 | 1,752.30 | 1,752.30 | 1,752.30 | 1,752.30 | 1,752.30 | 1,752.30 | 1,752.30 | 1,752.30 | 1,752.30 |
| E-3 | 1,303.50 | 1,385.40 | 1,468.50 | 1,468.50 | 1,468.50 | 1,468.50 | 1,468.50 | 1,468.50 | 1,468.50 | 1,468.50 | 1,468.50 | 1,468.50 | 1,468.50 | 1,468.50 | 1,468.50 |
| E-2 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 | 1,239.30 |
| E-1 ** | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 | 1,105.50 |
| E-1 *** | 1,022.70 | - | - | - | - | - | - | - | - | - | - | - | - | - | - |

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $5,382.90 per month, regardless of cumulative years of service under section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

## SCHEDULE 8–PAY OF THE UNIFORMED SERVICES (PAGE 3)

### Part II–RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c) of title 37, United States Code, is $734.10.

Note: As a result of the enactment of sections 602-694 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

**SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

| Locality Pay Area[1] | Rate |
|---|---|
| Atlanta, GA | 9.74% |
| Boston-Worcester-Lawrence, MA-NH-ME-CT-RI | 13.57% |
| Chicago-Gary-Kenosha, IL-IN-WI | 14.58% |
| Cincinnati-Hamilton, OH-KY-IN | 12.09% |
| Cleveland-Akron, OH | 10.33% |
| Columbus, OH | 10.70% |
| Dallas-Fort Worth, TX | 10.90% |
| Dayton-Springfield, OH | 9.62% |
| Denver-Boulder-Greeley, CO | 13.34% |
| Detroit-Ann Arbor-Flint, MI | 14.71% |
| Hartford, CT | 14.11% |
| Houston-Galveston-Brazoria, TX | 18.61% |
| Huntsville, AL | 9.08% |
| Indianapolis, IN | 8.85% |
| Kansas City, MO-KS | 9.28% |
| Los Angeles-Riverside-Orange County, CA | 16.05% |
| Miami-Fort Lauderdale, FL | 12.45% |
| Milwaukee-Racine, WI | 10.05% |
| Minneapolis-St. Paul, MN-WI | 11.56% |
| New York-Northern New Jersey-Long Island, NY-NJ-CT-PA | 15.23% |
| Orlando, FL | 8.67% |
| Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD | 12.11% |
| Pittsburgh, PA | 9.52% |
| Portland-Salem, OR-WA | 11.64% |
| Richmond-Petersburg, VA | 9.67% |
| Sacramento-Yolo, CA | 11.99% |
| St. Louis, MO-IL | 8.98% |
| San Diego, CA | 12.70% |
| San Francisco-Oakland-San Jose, CA | 19.04% |
| Seattle-Tacoma-Bremerton, WA | 11.77% |
| Washington-Baltimore, DC-MD-VA-WV | 11.48% |
| Rest of U.S. | 8.64% |

**SCHEDULE 10-ADMINISTRATIVE LAW JUDGES**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2002)

| | |
|---|---|
| AL-3/A | $ 86,500 |
| AL-3/B | 93,100 |
| AL-3/C | 99,800 |
| AL-3/D | 106,500 |
| AL-3/E | 113,100 |
| AL-3/F | 119,700 |
| AL-2 | 126,500 |
| AL-1 | 130,000 |

[1]Locality Pay Areas are defined in 5 CFR 531.603.

[FR Doc. 02–448

Filed 1–4–02; 8:45 am]

Billing code 3195–01–C

# Rules and Regulations

Federal Register
Vol. 67, No. 4
Monday, January 7, 2002

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

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 93

**[Docket No. 01–055–2]**

### States Approved To Receive Stallions and Mares From CEM-Affected Regions; Rhode Island

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

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** On November 1, 2001, the Animal and Plant Health Inspection Service published a direct final rule. (See 66 FR 55068–55071, Docket No. 01–055–1.) The direct final rule notified the public of our intention to amend the animal importation regulations by adding Rhode Island to the list of States approved to receive certain stallions and mares imported into the United States from regions affected with contagious equine metritis (CEM). We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

**EFFECTIVE DATE:** The effective date of the direct final rule is confirmed as December 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Dr. Barbara Bischoff, Staff Veterinarian, National Center for Import and Export, Technical Trade Services, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 26th day of December 2001.

**W. Ron DeHaven,**

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

[FR Doc. 02–264 Filed 1–4–02; 8:45 am]

**BILLING CODE 3410–34–U**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 94

**[Docket No. 01–010–2]**

### Change in Disease Status of Japan With Regard to Foot-and-Mouth Disease

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations governing the importation of certain animals, meat, and other animal products by adding Japan to the list of regions that are considered free of rinderpest and foot-and-mouth disease. We are taking this action because we have determined that Japan is now free of foot-and-mouth disease. We are also adding Japan to the list of regions that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or foot-and-mouth disease-affected countries. These actions update the disease status of Japan with regard to foot-and-mouth disease while continuing to protect the United States from an introduction of rinderpest and foot-and-mouth disease by providing additional requirements for meat and meat products imported into the United States from Japan.

**EFFECTIVE DATE:** January 7, 2002.

**FOR FURTHER INFORMATION CONTACT:** Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–3276.

**SUPPLEMENTARY INFORMATION:**

#### Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are declared free of rinderpest or free of both rinderpest and FMD. Rinderpest or FMD is considered to exist in all other parts of the world not listed. Section 94.11 of the regulations lists regions of the world that have been determined to be free of rinderpest and FMD, but that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions.

In an interim rule effective on March 8, 2000, and affirmed on July 14, 2000, we amended the regulations in § 94.1(a)(2) by removing Japan from the list of regions that have been declared free of rinderpest and FMD. This action was necessary because FMD had been confirmed in Japan. (Although Japan continues to be free of rinderpest, § 94.1(a)(2) lists regions that are declared free of both rinderpest and FMD.) Additionally, in that interim rule, we removed Japan from the list in § 94.11 of countries that are declared to be free of these diseases, but that are still subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. As a result of that action, the importation into the United States of any ruminant or swine or any fresh (chilled or frozen) meat of any ruminant or swine that left Japan on or after March 8, 2000, was prohibited or restricted.

In response to the March 2000 outbreak of FMD, Japan undertook intensive efforts to eradicate the disease. Japan's last FMD-affected premises was depopulated on May 15, 2000.

On September 4, 2001, we published in the **Federal Register** (66 FR 46228–46230, Docket No. 01–010–1) a proposal to amend the regulations by adding Japan to the list in § 94.1(a) of regions that are considered free of rinderpest and FMD. In that document, we also proposed to add Japan to the list in § 94.11(a) of regions declared free of rinderpest and FMD but that are subject to special restrictions on the importation of their meat and other animal products into the United States.

We solicited comments concerning our proposal for 60 days ending November 5, 2001. We received one comment by that date, from an organization representing American cattle producers. The commenter opposed the designation of Japan as free of FMD, arguing that insufficient time had passed since Japan's most recent reported case of FMD in May 2000 for the U.S. Department of Agriculture (USDA) to confirm eradication of the disease. The commenter recommended a 4- to 5-year disease-free waiting period from the time of the most recent recorded case of FMD to the designation of a country as FMD-free, during which time the importation into the United States of any animals, cut products, and byproducts from that country would be banned. Noting that the FMD virus can persist in the oropharynx of cattle for up to 30 months and can be preserved by refrigeration or freezing, the commenter argued that the 4- to 5-year time frame would provide a reasonable period within which the risk of FMD re-infection would be sufficiently diminished. The commenter also discussed the need for a comprehensive on-site review of the health of the livestock herds in the infected country by qualified U.S. animal health experts.

We continue to believe that designation of Japan as FMD-free is justified. International disease standards set by the Office International des Epizooties allow a country that was previously free of FMD but that subsequently suffered an occurrence to regain its FMD-free status 3 months after the last recorded case. Japan depopulated its last FMD-affected premises on May 15, 2000. While the virus can persist, surveillance conducted by Japanese authorities, which included serological testing and clinical assessment, did not reveal any carrier animals. In addition, the USDA did conduct an on-site visit to Japan in January 2001 and concluded that the depopulation and surveillance measures taken by Japanese authorities have ensured the eradication of FMD in Japan.

The commenter also stated that an outbreak of either FMD or bovine spongiform encephalopathy (BSE) in a country should be grounds to preclude disease-free certification for both of these diseases. According to the commenter, outbreaks of either of these diseases indicate a failure on the part of the affected country to take adequate precautionary measures to protect the health of its livestock. Therefore, the commenter contended that the confirmation of BSE in Japan on September 22, 2001, should preclude recognition of that country as FMD-free.

We are making no changes based on this comment. When a country first applies to the Animal and Plant Health Inspection Service (APHIS) to be recognized as free of a specific disease of concern, APHIS conducts an evaluation and considers a number of factors affecting the reliability of that country's animal disease prevention efforts. The factors considered include, but are not limited to, the disease history of the country; the authority, organization, and infrastructure of the veterinary services programs in the country; the extent to which movement of animals and animal products is controlled from regions of higher disease risk; the type and extent of disease surveillance in the country; and the policies and infrastructure for animal disease control in the country i.e., emergency response.

APHIS will recognize a country free of a specific disease only after it has determined that the factors listed above indicate an acceptable level of animal biosecurity in that country. As standard procedure, this determination is made only after APHIS representatives have conducted a site visit of the country in question. Based on the factors listed above, APHIS has determined that it is appropriate to consider Japan free of FMD.

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

**Effective Date**

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule restores Japan to the list of regions considered free of FMD. Immediate action is necessary to remove restrictions on the importation of animals, meat, and other animal products that are no longer necessary. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the regulations to add Japan to the list of regions that are considered free of rinderpest and FMD. We are taking this action because we have determined that Japan is now free of FMD. We are also adding Japan to the list of regions that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected countries. These actions update the disease status of Japan with regard to FMD while continuing to protect the United States from an introduction of rinderpest and FMD by providing additional requirements for any meat and meat products imported into the United States from Japan.

The following analysis addresses the economic effect of this rule on small entities, as required by the Regulatory Flexibility Act.

The livestock industry plays a significant role in the U.S. economy. According to the National Agricultural Statistics Service, in 2000, the total number of cattle and calves in the United States was approximately 98.05 million, valued at approximately $67.01 billion. U.S. operations with cattle numbered 1,115,650 in 1997, the last year for which census data are available. More than 99 percent of these cattle operations had gross receipts of less than $750,000, which qualifies them as small entities according to the standards set by the Small Business Administration.

The U.S. livestock industry also plays an important role in international trade. U.S. competitiveness in international markets relies significantly upon this country's reputation for producing high-quality, disease-free animals and animal products. Maintaining these favorable trade conditions depends, in part, on continued aggressive efforts to prevent any threat of FMD introduction into the United States. A single outbreak of FMD anywhere in the United States would close our major export markets for livestock and livestock products overnight. Most exports of meat, animals, and animal byproducts would be stopped until the disease was completely eradicated.

In 1999, the total earnings from U.S. exports of live cattle, swine, beef and veal, pork, and dairy products to the rest of the world were approximately $4.80 billion. Additionally, the export of other animals and animal products and byproducts generated approximately $5.64 billion in sales for the United States. Consequently, an outbreak of FMD could result in the potential loss of export sales in the billions of dollars as well as other costs to those involved in the U.S. livestock industry.

Because we are declaring Japan to be free of FMD but subject to the restrictions of § 94.11 due to its trading

relationships with rinderpest- or FMD-affected regions, this rule will produce economic benefits by continuing to protect against the introduction of rinderpest and FMD into the United States. Import values of dairy products, red meat, and red meat products represented less than 0.01 percent of the overall value of U.S. imports from Japan in 1999. Since Japan is not a significant source, and is not expected to become a significant source, of these products for the U.S. market, this rule will not have a noticeable effect on producer, wholesale, or consumer prices in the United States. Therefore, we expect that there will be very little or no effect on U.S. entities, large or small, as a result of this rule.

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

**Executive Order 12988**

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

**Paperwork Reduction Act**

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

**List of Subjects in 9 CFR Part 94**

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

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

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

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

**Authority:** 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

**§ 94.1 [Amended]**

2. In § 94.1, paragraph (a)(2) is amended by adding, in alphabetical order, the word ''Japan,''.

**§ 94.11 [Amended]**

3. In § 94.11, paragraph (a), the first sentence is amended by adding, in alphabetical order, the word ''Japan,''.

Done in Washington, DC, this 27th day of December, 2001.

**W. Ron DeHaven,**

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

[FR Doc. 02–262 Filed 1–4–02; 8:45 am]

BILLING CODE 3410–34–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–124–AD; Amendment 39–12578; AD 2001–26–12]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747–100, 747–200, 747–300, and 747SR Series Airplanes Powered by General Electric CF6–45/50 or Pratt & Whitney JT9D–70 Series Engines

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747–100, 747–200, 747–300, and 747SR series airplanes powered by General Electric CF6–45/50 or Pratt & Whitney JT9D–70 series engines, that currently requires a detailed visual inspection of the outboard diagonal brace for heat damage and cracking; and follow-on repetitive inspections and corrective actions, if necessary. This amendment requires accomplishment of the previously optional replacement of any existing sealant with heat-resistant sealant as terminating action for the repetitive inspections required by this AD. This amendment is prompted by reports of heat damage to the forward end of the diagonal brace after accomplishment of a previous strut and wing modification. The actions specified by this AD are intended to prevent heat damage to the diagonal brace, which could cause cracking, fracture, and possible loss of the diagonal brace load path and consequent separation of the strut and engine from the airplane.

**DATES:** Effective February 11, 2002.

The incorporation by reference of Boeing Alert Service Bulletin 747–54A2208, dated March 29, 2001, was approved previously by the Director of the Federal Register as of June 27, 2001 (66 FR 31527, June 12, 2001).

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–12–05, amendment 39–12260 (66 FR 31527, June 12, 2001), which is applicable to certain Boeing Model 747–100, 747–200, 747–300, and 747SR series airplanes powered by General Electric CF6–45/50 or Pratt & Whitney JT9D–70 series engines, was published in the **Federal Register** on September 4, 2001 (66 FR 46241). The action proposed to continue to require a detailed visual inspection of the outboard diagonal brace for heat damage and cracking; and follow-on repetitive inspections and corrective actions, if necessary. The action also proposed to require accomplishment of the previously optional terminating replacement of any existing sealant with heat-resistant sealant as terminating action for the repetitive inspections.

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

**Change to Final Rule**

Since the issuance of the proposal, the FAA has approved two alternative methods of compliance for AD 2001–12–05. A new paragraph (d)(2) has been added to this final rule to include those approvals.

**Conclusion**

After careful review of the available data, the FAA has determined that air

safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

**Cost Impact**

There are approximately 145 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 39 airplanes of U.S. registry will be affected by this AD.

The repetitive inspections that are currently required by AD 2001–12–05 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $2,340 per airplane, per inspection cycle.

The terminating action that is required by this AD action will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $100 per airplane. Based on these figures, the cost impact of the requirements of this AD is estimated to be $8,580, or $220 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–12260 (66 FR 31527, June 12, 2001), and by adding a new airworthiness directive (AD), amendment 39–12578, to read as follows:

**2001–26–12 Boeing:** Amendment 39–12578. Docket 2001–NM–124–AD. Supersedes AD 2001–12–05, Amendment 39–12260.

*Applicability:* Model 747–100, 747–200, 747–300, and 747SR series airplanes; certificated in any category; powered by General Electric CF6–45/50 series engines, or Pratt & Whitney JT9D–70 series engines.

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

*Compliance:* Required as indicated, unless accomplished previously.

To prevent heat damage to the diagonal brace, which could cause cracking or fracture of the diagonal brace, and possible loss of the diagonal brace load path and consequent separation of the strut and engine from the airplane, accomplish the following:

**Restatement of Certain Requirements of AD 2000–12–05:**

*Verification*

(a) Within 90 days after June 27, 2001 (the effective date of AD 2001–12–05, amendment 39–12260), do the actions required by paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) If an operator's maintenance records verify that, during the accomplishment of AD 95–13–07, amendment 39–9287, the seal backup plates were restored and BMS 5–63 high-temperature sealant was used in that restoration, no further action is required by this AD.

(2) If an operator's maintenance records do not verify that the actions specified in paragraph (a)(1) of this AD were accomplished, do the actions required by paragraph (b) of this AD.

*Inspections and Corrective Actions*

(b) Within 90 days after June 27, 2001, do the inspections and applicable corrective actions specified by paragraphs (b)(1) and (b)(2) of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2208, dated March 29, 2001. Thereafter, repeat the inspections at intervals not to exceed 6 months, until accomplishment of paragraph (c) of this AD.

*Outboard Strut Diagonal Brace*

(1) Do a detailed visual inspection of the forward 20 inches of the outboard strut diagonal brace, including all areas of the forward clevis lugs and brace body, for signs of heat damage or cracks, per Part 1 of the Accomplishment Instructions of the service bulletin.

(i) If no sign of heat damage or cracking is found, repeat the detailed visual inspection at intervals not to exceed 6 months, per the service bulletin, until accomplishment of paragraph (c) of this AD.

(ii) If any primer discoloration is found, before further flight, do a non-destructive test (NDT) inspection of the area to determine if the diagonal brace has heat damage per Part 1 of the Accomplishment Instructions of the service bulletin.

(A) If no heat damage is found during the NDT inspection, and no cracking is found during the detailed visual inspection, repeat the detailed visual inspection specified by paragraph (b)(1) of this AD at intervals not to exceed 6 months.

(B) If any heat damage is found during the NDT inspection, or any cracking is found during the detailed visual inspection, before further flight, do the actions specified in paragraph (c)(2) of this AD. Thereafter, repeat the detailed visual inspection specified by paragraph (b)(1) of this AD at intervals not to exceed 6 months.

*Firewall Openings of the Strut Aft Bulkhead*

(2) Do a detailed visual inspection of the firewall openings of the strut aft bulkhead to verify installation of seal backup plates and condition of the sealant application per Part 1 of the Accomplishment Instructions of the service bulletin.

(i) If no discrepancy (including damaged or missing seal backup plates, or damaged or missing sealant) is found, repeat the detailed

visual inspection specified by paragraph (b)(1) of this AD at intervals not to exceed 6 months.

(ii) If the seal backup plates are not installed, before further flight, install the seal backup plates and apply heat-resistant sealant, BMS 5–63, per Part 2 of the Accomplishment Instructions of the service bulletin. Accomplishment of this action terminates the repetitive inspections required by this AD.

(iii) If the seal backup plates are installed, but the sealant application is damaged or missing, before further flight, remove any existing sealant and apply heat-resistant sealant, BMS 5–63, per Part 3 of the Accomplishment Instructions of the service bulletin. Accomplishment of this action terminates the repetitive inspections required by this AD.

**Note 2:** Because it is difficult to distinguish between BMS 5–95 and BMS 5–63 sealants, removal and replacement of the existing sealant is required to ensure that the correct heat-resistant sealant, BMS 5–63, is used.

**New Requirements of This AD**

*Terminating Action and Corrective Action*

(c) Within 18 months after the effective date of this AD: Do the action specified by paragraph (c)(1), (c)(2), or (c)(3) of this AD, as applicable. Accomplishment of the applicable action constitutes terminating action for the repetitive inspections required by this AD.

(1) Following the inspections required by paragraphs (b)(1) and (b)(2) of this AD, if no cracking or heat damage is found during those inspections, and the seal backup plates are installed, before further flight, remove any existing sealant and apply heat-resistant sealant BMS 5–63, per Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2208, dated March 29, 2001.

(2) If any sign of heat damage or cracking is found during the inspections required by paragraph (b) of this AD, before further flight, do the actions specified by either paragraph (c)(2)(i) or (c)(2)(ii) of this AD.

(i) Replace the diagonal brace per Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2208, dated March 29, 2001.

(ii) Repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(3) If the seal back-up plates are not installed, before further flight, install the seal backup plates and apply heat-resistant sealant BMS 5–63, per Part 2 of the Accomplishment Instructions of the service bulletin.

*Alternative Methods of Compliance*

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2001–12–05, amendment 39–12260, are approved as alternative methods of compliance with this AD.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

*Special Flight Permits*

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

*Incorporation by Reference*

(f) Except as provided by paragraphs (a) and (c)(2)(ii) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–54A2208, dated March 29, 2001. The incorporation by reference of Boeing Alert Service Bulletin 747–54A2208, dated March 29, 2001, was approved previously by the Director of the Federal Register as of June 27, 2001 (66 FR 31527, June 12, 2001). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

*Effective Date*

(g) This amendment becomes effective on February 11, 2002.

Issued in Renton, Washington, on December 20, 2001.

**Ali Bahrami,**

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

[FR Doc. 02–87 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NE–41–AD; Amendment 39–12593; AD 2002–01–02]**

**RIN 2120–AA64**

## Airworthiness Directives; Turbomeca S.A. Arrius 1A Turboshaft Engines

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to Turbomeca S.A. Arrius 1A turboshaft engines. This action requires replacement of the 10 main fuel injectors in Arrius 1A engines with new or overhauled injectors. This amendment is prompted by routine inspections conducted in the repair workshop demonstrating that some main fuel injectors were partially or totally blocked. The actions specified in this AD are intended to prevent blocked main fuel injectors that could lead to engine flameout during engine deceleration or that could prevent the engine from obtaining the 2½ minute one engine inoperative (OEI) power.

**DATES:** Effective January 22, 2002.

Comments for inclusion in the Rules Docket must be received on or before March 8, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–41–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 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.

**FOR FURTHER INFORMATION CONTACT:** Robert P. McCabe, Aerospace Engineer, Boston Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA, 01803; telephone (781) 238–7138; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Turbomeca S.A. Arrius 1A turboshaft engines. The DGAC advises that during routine inspections in the repair workshop some main fuel injectors were discovered to be totally or partially blocked, and that this condition could cause flameouts during engine decelerations and OEI power shortfall occurrences.

**Manufacturer's Service Information**

Turbomeca S.A. (Group Snecma) has issued Alert Service Bulletin (ASB) No. A319 73 0071, dated January 1, 2001, that requires replacement of the 10 main fuel injectors in Arrius 1A engines with new or overhauled injectors. The DGAC classified this service bulletin as

mandatory and issued AD 2000–532(A) in order to assure the airworthiness of these Turbomeca S.A. Arrius 1A turboshaft engines in France.

**Bilateral Airworthiness Agreement**

This engine model is manufactured in France 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 DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

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

Since an unsafe condition has been identified that is likely to exist or develop on other Turbomeca S.A. Arrius 1A engines of the same type design, this AD is being issued to prevent blocked main fuel injectors that could lead to engine flameout during engine deceleration or that could prevent the engine from obtaining the 2½ minute OEI (maximum emergency) power. This AD requires replacement of the 10 main fuel injectors in Arrius 1A engines with new or overhauled injectors. Fuel injectors that have accumulated more than 1,350 hours of operation since new or last overhaul must be replaced before further flight. The actions are required to be done in accordance with the service bulletin described previously.

**Immediate Adoption of This AD**

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

**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 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 2001–NE–41–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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

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

Air transportation, Aircraft, Aviation safety, 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 adding the following new airworthiness directive:

**2002–01–02 Turbomeca S.A.:** Amendment 39–12593. Docket 2001–NE–41–AD.

**Applicability**

This airworthiness directive (AD) is applicable to Turbomeca S.A. Arrius 1A turboshaft engines installed on, but not limited to Eurocopter helicopters: Model AS355N, called the Ecureuil/Twinstar; and Model AS555UN, called the Fennic.

**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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance**

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

To prevent blocked main fuel injectors that could lead to engine flameout during engine deceleration or that could prevent the engine from obtaining the 2-½ minute one engine inoperative (OEI) power, replace the 10 main fuel injectors in Arrius 1A engines with new or overhauled injectors using the following schedule:

Replacement Schedule

(a) Before further flight, replace any fuel injector that has accumulated more than 1,350 hours of operation since new or last overhaul.

(b) Fuel injectors that have accumulated less than 1,350 hours of operation since new or last overhaul must be replaced prior to achieving 1,350 hours of operation.

**Service Documents for Reference**

(c) Turbomeca S.A. (Group Snecma) Alert Service Bulletin (ASB) No. A319 73 0071, dated January 1, 2001, contains additional information concerning the replacement of these injectors.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston 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, Boston ECO.

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

**Special Flight Permits Prohibited**

(e) Special flight permits are prohibited because fuel injector operation in excess of 1,350 hours is prohibited. However, operators can easily replace the fuel injectors at any location using standard maintenance tools.

**Note 3:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile (DGAC) airworthiness directive AD Number 2000–532(A), dated December 27, 2000.

**Effective Date**

(f) This amendment becomes effective on January 22, 2002.

Issued in Burlington, Massachusetts, on December 28, 2001.

**Robert J. Ganley,**

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

[FR Doc. 02–199 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Parts 107 and 108

**[Docket No. FAA–2001–10999; Amdt. Nos. 107–14 and 108–19]**

**RIN 2120–AH53**

## Criminal History Records Checks

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

**ACTION:** Final rule with request for comments; extension of comment period.

**SUMMARY:** On December 6, 2001, the FAA published a final rule with request for comments regarding criminal history records checks and invited comments. The comment period was originally scheduled to close on January 7, 2002; however, the FAA is extending the comment period an additional 10 days in response to a request from the Air Transport Association (ATA) and the Regional Airline Association (RAA).

**DATES:** Comments must be received on or before January 17, 2002.

**ADDRESSES:** Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW, Washington, DC 20590. You must identify the docket number FAA–2001–10999 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard. You may also submit comments through the Internet to *http://dms.dot.gov*.

You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 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 above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Linda Valencia, Office of Civil Aviation Security Policy and Planning, Civil Aviation Security Division (ACP–100), Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone 202–267–3413.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The final rule was adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; Feb. 26, 1979), however provides that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons were, and are, invited to participate in this rulemaking by submitting written data, views, or arguments. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment also are invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late-filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

See **ADDRESSES** above for information on how to submit comments.

### Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last five digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/armhome.htm* or the Office of the Federal Register's web page at *http://www.access.gpo.gov/su__docs/aces/aces140html*.

You can also get a 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. Be sure to identify the amendment number or docket number of this final rule.

### Extension of Comment Period

On December 6, 2001, the FAA published a final rule with request for comments entitled ''Criminal History Records Checks'' (66 FR 63474). The FAA requested that comments be submitted by January 7, 2002. By letter dated December 21, 2001, the Air Transport Association (ATA) and the Regional Airline Association (RAA) requested that the FAA extend the comment period for 10 days. The ATA and RAA stated that the rule raised practical and legal issues requiring resolution. They also stated that more time is needed for them to develop their recommendations and circulate them among their members before submitting them to the FAA.

The FAA determines that extending the comment period is in the public interest. Accordingly, the comment period for the final rule ''Criminal Records Checks'' is extended until January 17, 2002.

Issued in Washington, DC, on January 2, 2002.

**Anthony F. Fazio,**

*Director, Office of Rulemaking.*

[FR Doc. 02–358 Filed 1–2–02; 4:38 pm]

BILLING CODE 4910–13–P

## NATIONAL LABOR RELATIONS BOARD

### 29 CFR Part 102

### Revisions of Regulations Governing Stipulated Records Filed With the Board or With the Board's Administrative Law Judges

**AGENCY:** National Labor Relations Board.

**ACTION:** Final rule.

**SUMMARY:** The National Labor Relations Board is amending its regulations governing stipulated record cases to delete an outdated procedure for filing stipulated records with its Administrative Law Judges and to substitute an alternative procedure governing stipulated record cases filed either with the Board or with an Administrative Law Judge.

**DATES:** Effective: January 7, 2002.

**FOR FURTHER INFORMATION CONTACT:** John J. Toner, Executive Secretary, (202) 273–1936.

**SUPPLEMENTARY INFORMATION:** Section 102.35(a)(9) of the National Labor Relations Board's rules provides for a limited form of stipulation before Administrative Law Judges in which, following a hearing, transcripts are dispensed with and exceptions to findings of fact are waived. 29 CFR 102.35(a)(9). This provision was adopted several decades ago. It is never used today and was not used much at the time it was adopted. For this reason, the Board has decided to eliminate this procedure from its rules.

The Board has, on occasion, permitted parties to file stipulated records directly with it along with requests that the stipulated cases be decided without an evidentiary hearing. Typically these are cases in which the facts are not in dispute and the parties wish expedited consideration of what they perceive to be purely legal issues. Because this practice has never been memorialized in the Board's rules, the Board is adding it now. The same practice will also be made available in proceedings before Administrative Law Judges.

In describing the procedures for submitting a stipulation of facts, the rule states that a statement of the issues presented should be set forth in the stipulation and that each party should also submit a short statement (no more than three pages) of its position on the issues. The Board's experience with stipulations of facts has been that, while the parties know the contested issues and their positions on those issues, a mere stipulation of facts by itself may not be sufficient to convey that important information to the Board. Including a statement of issues in the stipulation of facts and submitting a short statement of each party's position on those issues will assist the Board in determining whether it wishes to decide a case without the benefit of a full hearing and a judge's decision.

For these reasons, the Board has decided to eliminate the former Section 102.35(a)(9) and subtitute for it a brief statement outlining the procedures for submitting stipulated records to it or to its Administrative Law Judges.

**Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these rules will not have a significant economic impact on a substantial number of small business entities as they merely permit parties to a Board proceeding to submit requests to have cases decided on a stipulated record.

**Executive Order 12866**

The regulatory review provisions of Executive Order 12866 do not apply to independent regulatory agencies. However, even if they did, the proposed changes in the Board's rules would not be classified as ''significant rules''' under Section 6 of Executive Order 12866, because they will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**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; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based companies to compete with foreign-based companies in domestic and export markets.

**Paperwork Reduction Act**

This part does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

**List of Subjects in 29 CFR Part 102**

Administrative practice and procedure, Labor management relations.

For the reasons set forth in the preamble, the National Labor Relations Board is amending 29 CFR Chapter I, Part 102, as follows:

## PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for part 102 continues to read as follows:

**Authority:** Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117 also issued under sec. 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)), and section 442a(j) and (k) of the Privacy Act (5 U.S.C. 55a(j) and (k)). Sections 102.143 through 102.155 also issued under sec. 504(c)(1) of the Equal Access to Justice Act as amended (5 U.S.C. 504(c)(1)).

2. Section 102.35 is amended by revising the heading and by further revising paragraph (a)(9) to read as follows:

**§ 102.35 Duties and powers of administrative law judges; stipulations of cases to administrative law judges or to the Board; assignment and powers of settlement judges.**

(a) * * *

(9) To approve stipulations, including stipulations of facts that waive a hearing and provide for a decision by the administrative law judge. Alternatively, the parties may agree to waive a hearing and decision by an administrative law judge and submit directly to the Executive Secretary a stipulation of facts, which, if approved, provides for a decision by the Board. A statement of the issues presented should be set forth in the stipulation of facts and each party should also submit a short statement (no

more than three pages) of its position on the issues. If the administrative law judge (or the Board) approves the stipulation, the administrative law judge (or the Board) will set a time for the filing of briefs. In proceedings before an administrative law judge, no further briefs shall be filed except by special leave of the administrative law judge. In proceedings before the Board, answering briefs may be filed within 14 days, or such further period as the Board may allow, from the last date on which an initial brief may be filed. No further briefs shall be filed except by special leave of the Board. At the conclusion of the briefing schedule, the judge (or the Board) will decide the case or make other disposition of it.

* * * * *

Dated, Washington, DC, December 21, 2001.

By direction of the Board.

**John J. Toner,**

*Executive Secretary, National Labor Relations Board.*

[FR Doc. 02–80 Filed 1–4–02; 8:45 am]

BILLING CODE 7545–01–P

## NATIONAL LABOR RELATIONS BOARD

### 29 CFR Part 102

### Procedural Rules Eliminating Requirement to File Extra Copies of Unfair Labor Practice Charges and Representation Petitions With the National Labor Relations Board

**AGENCY:** National Labor Relations Board.

**ACTION:** Final rule.

**SUMMARY:** The National Labor Relations Board is revising its rules that govern filing extra copies of unfair labor practice charges and representation petitions with the Board. The revisions are being adopted in order to relieve persons filing charges and petitions from the requirement of having to file extra copies which, as a practical matter, the Board no longer needs. The intended effect of the revisions is to relieve members of the public of paperwork burdens without adversely affecting case processing.

**EFFECTIVE DATE:** February 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570. Telephone: (202) 273–1936.

**SUPPLEMENTARY INFORMATION:** At present, the rules of the National Labor Relations Board (NLRB) provide that parties filing unfair labor practice charges (section 102.11, 29 CFR 102.11), petitions for certification or decertification (section 102.60(a), 29 CFR 102.60(a)), and petitions for referendum under 29 U.S.C. sec. 9(e)(1) of the National Labor Relations Act (section 102.83, 29 CFR 102.83) must file an original and at least four additional copies of such charges or petitions. Although the number of copies required has changed slightly over the years, the requirement to file extra copies of charges and petitions dates to the inception of the NLRB in 1936, a time predating modern photocopy methods. In those days, extra copies were required in order to facilitate service of those documents by the Board on other parties as well as for the Board to maintain extra copies that its staff needed when processing the charges or petitions. Upon receipt of the charge or petition, a Board employee would assign a case number to the incoming document, stamp that number on each of the copies, and then serve or distribute those copies as needed.

At the present time, Regional Offices of the Board generally find that it is simpler and more cost-efficient just to enter the date and the number of the case on the original of the filed charge or petition and then photocopy that document for service and distribution. This practice was implicitly recognized when the Board's Rules were amended in 1995 to permit filing charges and petitions by facsimile transmission and not to require extra copies filed in that manner, beyond the requirement to send in a signed original in addition to the document filed by facsimile. The amendments the Board is now making remove the requirements to file extra copies of charges or petitions filed in any manner.

Finally, in reviewing this proposal, we found that we had omitted to include in § 102.83 a reference to the requirement that persons who file petitions covered by that section by facsimile transmission shall also file an original for the Agency's records. We now amend § 102.83 to include that reference.

**Executive Order 12866**

The regulatory review provisions of Executive Order 12866 do not apply to independent regulatory agencies. However, even if they did, the proposed changes in the Board's rules would not be classified as ''significant rules'' under Section 6 of Executive Order 12866, because they will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $ 100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these rules will not have a significant economic impact on a substantial number of small business entities as they merely relieve members of the public of an unnecessary requirement to file extra copies of charges or petitions with the NLRB.

**Paperwork Reduction Act**

These rules are not subject to Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since they do not contain any new information collection requirements.

**Small Business Regulatory Enforcement Fairness Act**

Because these rules relate to Agency procedure and practice and merely modify the agency's filing procedures, the Board has determined that the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

**List of Subjects in 29 CFR Part 102**

Administrative practice and procedure, Labor management relations.

To relieve members of the public of the unnecessary burden of filing extra copies of charges or petitions with the NLRB, the Board amends 29 CFR part 102 as follows:

## PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for 29 CFR part 102 continues to read as follows:

**Authority:** Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117 also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.11 is revised to read as follows:

### § 102.11 Forms; jurat; or declaration.

Such charges shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalty of perjury that its contents are true and correct (see 28 U.S.C. Sec. 1746). One original of such charge shall be filed. A party filing a charge by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper.

3. Section 102.60(a) is revised to read as follows:

### § 102.60 Petitions.

(a) *Petition for certification or decertification; who may file; where to file; withdrawal.*—A petition for investigation of a question concerning representation of employees under paragraphs (1)(A)(i) and (1)(B) of section 9(c) of the Act (hereinafter called a petition for certification) may be filed by an employee or group of employees or any individual or labor organization acting in their behalf or by an employer. A petition under paragraph (1)(A)(ii) of section 9(c) of the Act, alleging that the individual or labor organization which has been certified or is being currently recognized as the bargaining representative is no longer such representative (hereinafter called a petition for decertification), may be filed by any employee or group of employees or any individual or labor organization acting in their behalf. Petitions under this section shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalty of perjury, that its contents are true and correct (see 28 U.S.C. Sec. 1746). One original of the petition shall be filed. A person filing a petition by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. Except as provided in § 102.72, such petitions shall be filed with the Regional Director for the Region wherein the bargaining unit exists, or, if the bargaining unit exists in two or more Regions, with the Regional Director for any of such Regions. Prior to the transfer of the case to the Board, pursuant to § 102.67, the petition may be withdrawn only with the consent of the Regional Director with whom such petition was filed. After the transfer of the case to the Board, the petition may be withdrawn only with the consent of the Board. Whenever the Regional Director or the Board, as the case may be, approves the withdrawal of any petition, the case shall be closed.

* * * * *

4. Section 102.83 is revised to read as follows:

### § 102.83 Petition for referendum under section 9(e)(1) of the Act; who may file; where to file; withdrawal.

A petition to rescind the authority of a labor organization to make an agreement requiring as a condition of employment membership in such labor organization may be filed by an employee or group of employees on behalf of 30 percent or more of the employees in a bargaining unit covered by such an agreement. The petition shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of his knowledge and belief. One original of the petition shall be filed with the Regional Director wherein the bargaining unit exists or, if the unit exists in two or more Regions, with the Regional Director for any of such Regions. A person filing a petition by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. The petition may be withdrawn only with the approval of the Regional Director with whom such petition was filed, except that if the proceeding has been transferred to the Board, pursuant to § 102.67, the petition may be withdrawn only with the consent of the Board. Upon approval of the withdrawal of any petition the case shall be closed.

Dated, Washington, DC, December 21, 2001.

By Direction of the Board.

**John J. Toner,**

*Executive Secretary, National Labor Relations Board.*

[FR Doc. 02–79 Filed 1–4–02; 8:45 am]

**BILLING CODE 7545–01–P**

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Parts 1912 and 1912a

**RIN 1218–AC04**

## Advisory Committees

**ACTION:** Final rule; amendments to procedural rules.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) is amending its rules governing membership on advisory committees to clarify that the Secretary has the discretion to remove and replace an advisory committee member at any time. The advisory committee rules, including the rules dealing with the tenure of members, are rules of agency organization, practice, or procedure, for which public notice and comment are not required.

**DATES:** These amendments are effective January 7, 2002.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Friedman, OSHA Office of Public Affairs, U. S. Department of Labor, 200 Constitution Avenue, N.W., Room N3647, Washington, DC 20210, phone (202) 693–1999.

**SUPPLEMENTARY INFORMATION:** Section 7(a)(1) of the Occupational Safety and Health Act, 29 U.S.C. 656(a)(1), establishes a National Advisory Committee on Occupational Safety and Health (NACOSH). The purpose of NACOSH is to ''advise, consult with, and make recommendations to the Secretary [of Labor] and the Secretary of Health and Human Services on matters relating to the administration of the Act.'' 29 U.S.C. 656(a)(2). NACOSH consists of 12 members, appointed by the Secretary of Labor, who represent management, labor, occupational safety and occupational health professions, and the public.

The Construction Safety Act (CSA), 40 U.S.C. 333, created the Advisory Committee on Construction Safety and Health (ACCSH), to advise the Secretary on standard-setting and other matters

related to the administration of the CSA. See 29 CFR 1912.3. In addition, section 7(b) of the Act, 29 U.S.C. 656(b), gives the Secretary of Labor the authority to establish additional advisory committees to assist in the Secretary's standard-setting functions under 29 U.S.C. 655. Such committees may be either continuing committees or ad hoc committees established to render advice in particular rulemaking proceedings. 29 CFR 1912.2. The Secretary has exercised that authority to establish, as a continuing committee, the Maritime Advisory Committee for Occupational Safety and Health (MACOSH), and has also established ad hoc committees to advise on particular rules.

Advisory committees have played an important role in the administration of the OSH Act by providing a means for the Secretary and the Assistant Secretary for Occupational Safety and Health to obtain the advice of persons representing a variety of interests on how best to fulfill the Act's objective of ensuring that American workers have safe and healthful workplaces. However, the advice the committees render is only valuable to the Secretary and the Assistant Secretary if they have full confidence in the members of the committees. To ensure such confidence, the Secretary must have the discretion to remove and replace any member in whom she lacks confidence.

The current regulations governing the tenure of all advisory committee members except those on NACOSH give the Secretary complete discretion to appoint members who have her confidence. Section 1912.3(e), which applies to ACCSH, allows the Secretary to remove and replace a member ''in the interests of the administration of legislation involved.'' Section 1912.10(a), which governs other continuing advisory committees, allows the Secretary to remove a member ''in the interest of the administration of the Act.'' Similarly, section 1912.11, which deals with ad hoc committees, allows the Secretary to remove a member ''in the interest of the administration of the Act.'' These provisions also provide for the Secretary to remove a member of an advisory committee if that member becomes unable to serve or no longer meets the representational requirements of the Act. The current regulation governing tenure of members on NACOSH is unique in that it does not provide for removal of a member at the discretion of the Secretary. A member may be removed only if he or she becomes unable to serve, if the Secretary determines that he or she no longer meets the representational requirements of the Act. 29 CFR 1912a.3.

OSHA believes that the same removal requirements should apply to all advisory committees. As already discussed, the Secretary and Assistant Secretary must have complete confidence in all advisory committee members and must be able to remove any member in whom they have lost confidence. Therefore, section 1912a.3, which applies to NACOSH, is being amended to be consistent with the regulations applicable to the other advisory committees under the Act to give the Secretary full discretion to remove any advisory committee member for any reason. By providing that the Secretary has complete discretion to remove a member, it is no longer necessary to include the specific bases upon which a member may be removed (i.e., unable to serve or no longer meets the representational requirements of the Act). Therefore, the sections pertaining to removal—1912a.3, 1912.3(a), 1912.10(a), and 1912.11—are being amended so that they are worded consistently and provide that the Secretary may, in his or her discretion, remove any member at any time.

These amendments constitute a rule of agency organization, practice, or procedure. Hence, notice-and-comment procedures are not required. 5 U.S.C. 553(b). These amendments are to take effect immediately. Given the technical and procedural nature of these amendments, the agency finds that it is unnecessary to provide 30 days before this rule takes effect, and hence has good cause for making the effective date immediate pursuant to 5 U.S.C. 553(d)(3).

**AUTHORITY AND SIGNATURE:** This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor. It is issued pursuant to sections 7 and 8(g)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656, 657), 5 U.S.C. 553, and Secretary's Order 3–2000 (65 FR 50017).

**List of Subjects**

*29 CFR Part 1912*

Advisory committees, Freedom of information, Occupational safety and health.

*29 CFR Part 1912a*

Advisory committees, Occupational safety and health.

Signed at Washington, DC, this 28th day of December, 2001.

**John L. Henshaw,**

*Assistant Secretary of Labor.*

Accordingly, parts 1912 and 1912a of 29 CFR are hereby amended as set forth below:

## PART 1912—[AMENDED]

1. The authority citation for 29 CFR part 1912 is revised to read as follows:

**Authority:** Secs. 4, 6, 7, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 656, 657); 5 U.S.C. 553; Federal Advisory Committee Act (5 U.S.C. App. 2); sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 3–2000 (65 FR 50017), as applicable.

2. Paragraph (e) of § 1912.3 is revised to read as follows:

### § 1912.3 Advisory Committee on Construction Safety and Health.

* * * * *

(e) Except as provided in paragraphs (f) through (j) of this section, each member of the Advisory Committee shall serve for a period of 2 years. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint for the remainder of the unexpired term a new member who shall represent the same interest as his or her predecessor.

* * * * *

3. Paragraph (a) of § 1912.10 is revised to read as follows:

### § 1912.10 Terms of continuing committee members.

(a) Each member of a continuing committee established under section 7(b) of the Act, other than those appointed to a committee when it is formed initially shall serve for a period of 2 years. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint for the remainder of the unexpired term a new member who shall represent the same interest as his or her predecessor.

* * * * *

4. Section 1912.11 is revised to read as follows:

**§ 1912.11 Terms of ad hoc committee members.**

Each member of an ad hoc advisory committee shall serve for such period as the Assistant Secretary may prescribe in his notice of appointment. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint a new member to serve for the remaining portion of the period prescribed in the notice appointing the original member of the committee.

## PART 1912a—[AMENDED]

5. The authority citation for 29 CFR Part 1912a is revised to read as follows:

**Authority:** Secs. 4, 6, 7, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 656, 657); 5 U.S.C. 553; Federal Advisory Committee Act (5 U.S.C. App. 2); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 3–2000 (65 FR 50017), as applicable.

6. Section 1912a.3 is revised to read as follows:

**§ 1912a.3 Terms of membership.**

Commencing on July 1, 1973, the terms of membership shall be divided into two classes, each consisting of six members. Members of the first class shall be appointed for a term of one year. Members of the second class shall be appointed for a term of two years. Thereafter, members shall be appointed for regular terms of two years. At all times the Committee shall be composed of representatives of management, labor, and occupational safety and health professions, and of the public. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint for the remainder of the unexpired term a new member who shall represent the same interest as his or her predecessor.

[FR Doc. 02–122 Filed 1–4–02; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF VETERANS AFFAIRS

## 38 CFR Part 52

**RIN 2900–AJ74**

## Per Diem for Adult Day Health Care of Veterans in State Homes

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document establishes regulations setting forth a mechanism for paying per diem to State homes providing adult day health care to eligible veterans. The intended effect of the rule is to ensure that veterans receive high quality care in State homes.

**DATES:** *Effective Date:* February 6, 2002.

The incorporation by reference of certain publications in this rule is approved by the Director of the Office of the Federal Register as of February 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** L. Nan Stout, Chief, State Home Per Diem Program (114), Veterans Health Administration, 202–273–8538.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on June 28, 2000 (65 FR 39835), we proposed to establish a new part 52 setting forth a mechanism for the Department of Veterans Affairs (VA) to pay per diem to State homes providing adult day health care to eligible veterans. We provided a 60-day comment period which ended August 28, 2000. We received comments from six states and one association. The issues raised in the comments are discussed below. Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule with changes explained below.

One commenter commended VA for including provisions in the rule to ensure that State homes meet the fire and safety provisions of the National Fire Protection Association's Life Safety Code entitled ''NFPA 101, Life Safety Code.'' The final rule incorporates, by reference, the 2000 edition instead of the 1997 edition since the Life Safety Code has been updated.

A commenter questioned VA's authority to establish the provisions in § 52.40 that provide for State home payments to be made on a per diem basis. The commenter asserted that instead of per diem payments the payments should be made based on individual contracts between VA and the State. The commenter further asserted that the proposed per diem amount is inadequate to cover State costs, including construction and other capital expenditures. No changes are made based on these comments. In 38 USC 1741(a)(2) VA is authorized to make payments to State homes for adult day health care only on a per diem basis at a rate determined by VA. We believe Congress intended VA to determine one national per diem as is required for per diem payments for domiciliary, nursing home, or hospital care. We also do not believe this statute can be interpreted to permit contracting for care in State homes because it requires VA to ''determine'' a per diem rate. This per diem rate is not intended to cover costs of construction and capital expenditures. To obtain VA assistance in paying for those costs, States may apply for a State home construction or acquisition grant established under 38 USC 8131–8136.

One commenter stated that staffing would be cost-prohibitive with the low per diem amount paid by VA. No changes are made based on this comment. The per diem amount is a grant to a State under 38 U.S.C. 1741 for adult day health care, but was not intended to cover the total cost of care.

The proposed regulations at § 52.40(a)(2) state that per diem will be paid only for a day that the veteran is under care of the facility at least six hours. Three commenters asserted that the six-hour requirement should be lessened. They argue that their costs are fixed and based on the projected numbers for each day. We believe that we should provide per diem only for periods for which a veteran would be provided the full range of therapeutic activities that the veteran needs. Upon further reflection we believe this still can be accomplished if the veteran is present for at least three hours. Consistent with this conclusion and administrative concerns, we have changed the rule to allow for one per diem payment for a period of six hours or more in one calendar day or any two periods of at least three hours each (but each less than six hours) in any two calendar days in a calendar month.

The proposed regulations at § 52.50 set forth eligibility requirements for veterans receiving adult day health care on whose behalf VA pays per diem. One commenter asserted that the criteria are too restrictive. No changes are made based on this comment. The eligibility criteria reflect statutory requirements that may not be changed by regulation.

The proposed rule at § 52.80 provides that participants in the adult day health care program must meet certain conditions, including two of seven indicators. One of the indicators is met simply by being ''75 years old or over.''

One commenter asserted that the indicator should include individuals 65 years of age or older. No changes are made based on this comment. Age is only one of the seven criteria. We believe that 75 is the appropriate threshold for concluding that meeting at least one of the other criteria would customarily create the types of needs requiring admission to an adult day health care facility. Those younger than 75 could still meet the admission criteria if they meet at least two of the other criteria.

The proposed regulations at § 52.110(c)(1) provided a comprehensive assessment as follows: ''The program management must make a comprehensive assessment of a participant's needs using (on and after January 1, 2002) Health Care Administration Long-term Care Resident Assessment Instrument Version 2.0.'' These provisions reflect standards for inpatient care. We are changing the assessment tool to the ''Minimum Data Set for Home Care (MDS-HC) Instrument Version 2.0'' to provide a tool appropriate for outpatient type settings such as adult day health care.

The proposed regulations at § 52.110(c)(1)(ii) stated that one initial home visit must be conducted as part of the needs assessment for the veteran. Three commenters asserted that this should not be included as a requirement. Upon further consideration, we agree that these provisions should not be mandatory. Although we recommend home visits, information regarding the home environment can be obtained by other means, e.g., from family members. We have revised the regulations accordingly.

The proposed regulations at § 52.130 state that VA recommends that the nurse on duty at the adult day health care facility be a geriatric nurse practitioner or clinical nurse specialist. One commenter indicated that this would cause an undue hardship. We make no changes based on this comment. This is only a recommendation, not a requirement.

The proposed regulations at § 52.140(e)(1) provide that adult day health care patients must be provided at least two meals daily. Three commenters asserted that one meal a day should be sufficient. Most veterans stay at least six hours a day and come in time for breakfast. Accordingly, we believe that adult day health care facilities must provide at least two meals for these veterans. However, for a veteran stay of no more than four hours there would be no need to provide two meals. Accordingly, the final rule is modified to require two meals a day for a veteran stay of more than four hours and only one meal a day for a veteran stay of less than four hours.

One commenter noted a typographical error in proposed 52.150(b)(3) which refers to a paragraph ''(f)''. The reference, which is corrected by this document, should have been to paragraph ''(e)''.

The proposed regulations at § 52.200 set forth standards for the physical environment of State home adult day health care facilities. One commenter asserted that these provisions would be too demanding if applied to existing facilities. No changes are made based on this comment. Currently, there are no State homes receiving per diem under VA's State adult day health care program. We believe the proposed standards for physical environment represent the minimum standards needed to provide high quality care.

The proposed regulations at § 52.200(b)(3) state that the indoor space for an adult day health care facility must be at least 60 square feet per participant excluding office space for staff. One commenter asserted that the regulations should impose a 30-square feet requirement. No changes are made based on this comment. We believe that 60 square feet of program space per participant is necessary for participants to have access to the full range of program activities, services, and equipment that is needed to provide high quality care.

The proposed rule at § 52.210(e) states that if a program is operated by an entity contracting with the State, the State must assign a State employee to monitor the operations of the facility on a full-time, onsite basis. One commenter questioned whether the State employee would qualify as full-time, onsite if such individual on a full-time basis oversaw the adult day health care facility while also overseeing a colocated State home for nursing home and domiciliary services. We believe that the oversight function could be met under the factual situation presented by the comments. We have amended the rule accordingly.

The proposed regulations at § 52.210(g)(3) provide that ''[t]he staff-participant ratio must be sufficient in number and skills (at least one staff to four participants) to ensure compliance with the standards of this part.'' Three commenters asserted that this should be no more stringent than the ratio of one staff to 4–6 participants, which VA adult day health care facilities use. We agree that under the criteria in § 52.210(g)(3) the ratio of one staff to 4–6 participants would be adequate to meet the needs of the participants. Accordingly, we have changed the provisions in § 52.210(g)(3) to allow the ratio of one staff to 4–6 participants.

The proposed rule at § 52.210(s) states that a facility recognized as a State home for providing adult day health care may only provide adult day health care in the areas of the facility recognized as a State home for providing adult day health care. One commenter asserted that this requirement would be too demanding. No changes are made based on this comment. We believe that designated spaces are needed for each level of care. Otherwise, the special needs for each program might not be adequately addressed.

The proposed regulations at § 52.220(a) state that ''the adult day health care program management must provide, arrange, or contract for transportation'' for participants. Three commenters asserted that State homes should not be required to provide transportation from a veteran's home to the adult day health care facility. We believe that transportation should be included in the cost of operating the adult day health care facility. Transportation is the single most important service the State can provide for a successful adult day health care program. The only way to ensure availability of transportation is to include it as a responsibility of a State. However, we also believe that the veteran or the veteran's family should be able to decline transportation offered by the adult day health care program management and make their own arrangements for the transportation. These concepts are consistent with the original purpose in the proposed rule. Changes are made to the final rule to more clearly reflect these concepts.

The proposed regulations at § 52.220(c) provide that all vehicles transporting participants to and from adult day health care facilities must be equipped with a device for two-way communication and one additional staff person besides the driver. One commenter asserted that these provisions should be deleted, and another commenter asserted that it was not necessary to have an additional staff person besides the driver. We have retained the provisions requiring the vehicle to be equipped with a device for two-way communication. This is necessary to ensure that the adult day health care officials would be able to provide any necessary information or assistance in an emergency situation. However, we are deleting the proposed requirement of one additional staff person besides the driver. We believe the driver would be able to provide or

obtain assistance as necessary for patient safety.

The provision at § 52.40 sets forth the per diem amount for eligible veterans participating in a State home adult day health care. This is the amount authorized under 38 U.S.C. 1741 and Congressionally-approved in the budget. For fiscal year 2002 the amount is 34.64. Accordingly, the final rule includes the rate for fiscal year 2002. In addition to academic requirements, the proposed rule at § 52.2 provided that a clinical nurse specialist must have at least two years of successful clinical practice in the specialized area of nursing practice following academic preparation. Upon further review, we have determined that the academic requirements are sufficient to qualify an individual to conduct the duties of a clinical nurse specialist. Accordingly, we have deleted the practice requirement.

In § 52.10, we included transition provisions for recognized adult day health care facilities. However, we are deleting these provisions because there are no adult day health care facilities that would be eligible to utilize the transition provisions.

In § 52.100 we included requirements that a therapeutic recreation specialist must be licensed or registered, if applicable, by the State in which the individual practices. We are deleting the reference to ''registered'' since no State registers therapeutic recreation specialists.

In § 52.130, we proposed that the nurse staffing must be based on a staffing methodology that uses case mix. We have deleted this provision because the needs of patients are similar in adult day health care facilities and there is no need for case mix.

In § 52.200, we proposed that an adult day health care facility provide a quiet room that, among other things, would allow for rest. To accomplish this the room must have a bed. We have amended these provisions to specify that the room must have a bed. Also, editorial changes are made for purposes of clarity.

**Paperwork Reduction Act of 1995**

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), collections of information are set forth in the provisions of §§ 52.20, 52.30, 52.40, 52.70, 52.71, 52.80, 52.90, 52.100, 52.110, 52.120, 52.130, 52.150, 52.160, 52.180, 52.190 and 52.210 of this rule. Many of these collections of information require the submission to VA of information on forms published at 38 CFR part 58.

The information collections in this document concern various activities related to the operation of a State home providing adult day health care to eligible veterans.

The collection of information contained in the notice of proposed rulemaking was submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)).

Interested parties were invited to submit comments on the collection of information. However, no comments were received. OMB has approved this information under control number 2900–0160.

VA is not authorized to impose a penalty on persons for failure to comply with information collection requirements which do not display a current OMB control number, if required.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. All of the entities that are subject to this final rule are State government entities under the control of State governments. Of the 102 State homes, all are operated by State governments except for 20 that are operated by entities under contract with State governments. These contractors are not small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

**Executive Order 12866**

This document has been reviewed by OMB pursuant to Executive Order 12866.

**Executive Order 13132**

This document does not have federalism implications under Executive Order 13132.

**List of Subjects in 38 CFR Part 52**

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Government programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Incorporation by reference, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: October 17, 2001.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reason set forth in the preamble, 38 CFR Chapter I is amended by adding a new part 52 to read as follows.

## PART 52—PER DIEM FOR ADULT DAY HEALTH CARE OF VETERANS IN STATE HOMES

### Subpart A—General

Sec.

52.1 Purpose.
52.2 Definitions.

### Subpart B—Obtaining Per Diem for Adult Day Health Care in State Homes

52.10 Per diem based on recognition and certification.
52.20 Application for recognition based on certification.
52.30 Recognition and certification.

### Subpart C—Per Diem Payments

52.40 Monthly payment.
52.50 Eligible veterans.

### Subpart D—Standards

52.60 Standards applicable for payment of per diem.
52.61 General requirements for adult day health care program.
52.70 Participant rights.
52.71 Participant and family caregiver responsibilities.
52.80 Enrollment, transfer and discharge rights.
52.90 Participant behavior and program practices.
52.100 Quality of life.
52.110 Participant assessment.
52.120 Quality of care.
52.130 Nursing services.
52.140 Dietary services.
52.150 Physician services.
52.160 Specialized rehabilitative services.
52.170 Dental services.
52.180 Administration of drugs.
52.190 Infection control.
52.200 Physical environment.
52.210 Administration.
52.220 Transportation.

**Authority:** 38 U.S.C. 101, 501, 1741–1743, unless otherwise noted.

## Subpart A—General

### § 52.1 Purpose.

This part sets forth the mechanism for paying per diem to State homes providing adult day health care to eligible veterans and includes quality assurance requirements that are intended to ensure that veterans receive high quality care in State homes.

### § 52.2 Definitions.

For purposes of this part—

*Activities of daily living (ADLs)* means the functions or tasks for self-care usually performed in the normal course of a day, i.e., mobility, bathing, dressing, grooming, toileting, transferring, and eating.

*Clinical nurse specialist* means a licensed professional nurse with a master's degree in nursing and a major in a clinical nursing specialty from an academic program accredited by the National League for Nursing.

*Facility* means a building or any part of a building for which a State has submitted an application for recognition as a State home for the provision of adult day health care or a building, or any part of a building, which VA has recognized as a State home for the provision of adult day health care.

*Instrumental activities of daily living (IADLs)* means functions or tasks of independent living, i.e., shopping, housework, meal preparation and cleanup, laundry, taking medication, money management, transportation, correspondence, and telephone use.

*Nurse practitioner* means a licensed professional nurse who is currently licensed to practice in the State; who meets the State's requirements governing the qualifications of nurse practitioners; and who is currently certified as an adult, family, or gerontological nurse practitioner by the American Nurses Association.

*Physician* means a doctor of medicine or osteopathy legally authorized to practice medicine or surgery in the State.

*Physician assistant* means a person who meets the applicable State requirements for physician assistant, is currently certified by the National Commission on Certification of Physician Assistants (NCCPA) as a physician assistant, and has an individualized written scope of practice that determines the authorization to write medical orders, prescribe medications and to accomplish other clinical tasks under the appropriate supervision by the primary care physician.

*Primary physician* or *Primary care physician* means a designated generalist physician responsible for providing, directing and coordinating health care that is indicated for the residents.

*State* means each of the several States, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

*State home* means a home approved by VA which a State established primarily for veterans disabled by age, disease, or otherwise, who by reason of such disability are incapable of earning a living. A State home may provide domiciliary care, nursing home care, adult day health care, and hospital care. Hospital care may be provided only when the State home also provides domiciliary and/or nursing home care.

VA means the U.S. Department of Veterans Affairs.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

## Subpart B—Obtaining Per Diem for Adult Day Health Care in State Homes

### § 52.10 Per diem based on recognition and certification.

*VA* will pay per diem to a State for providing adult day health care to eligible veterans in a facility if the Under Secretary for Health recognizes the facility as a State home based on a current certification that the facility management meet the standards of subpart D of this part.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

### § 52.20 Application for recognition based on certification.

To apply for recognition and certification of a State home for adult day health care, a State must:

(a) Send a request for recognition and certification to the Under Secretary for Health (10), VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. The request must be in the form of a letter and must be signed by the State official authorized to establish the State home;

(b) Allow VA to survey the facility as set forth in § 52.30(c); and

(c) Upon request from the director of the VA medical center of jurisdiction, submit to the director all documentation required under subpart D of this part.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

### § 52.30 Recognition and certification.

(a)(1) The Under Secretary for Health will make the determination regarding recognition and the initial determination regarding certification, after receipt of a tentative determination from the director of the VA medical center of jurisdiction, regarding whether the facility and program management meet or do not meet the standards of subpart D of this part. The Under Secretary for Health will notify the official in charge of the program, the State official authorized to oversee operations of the State home, the VA Network Director (10N1–22), Assistant Deputy Under Secretary for Health (10N), and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), of the action taken.

(2) For each facility recognized as a State home, the director of the VA medical center of jurisdiction will certify annually whether the facility and program management meet, provisionally meet, or do not meet the standards of subpart D of this part (this certification should be made every 12 months during the recognition anniversary month or during a month agreed upon by the VA medical center director and officials of the State home facility). A provisional certification will be issued by the director only upon a determination that the facility or program management does not meet one or more of the standards in subpart D of this part, that the deficiencies do not jeopardize the health or safety of the residents, and that the program management and the director have agreed to a plan of correction to remedy the deficiencies in a specified amount of time (not more time than the VA medical center of jurisdiction director determines is reasonable for correcting the specific deficiencies). The director of the VA medical center of jurisdiction will notify the official in charge of the program, the State official authorized to oversee the operations of the State home, the VA Network Director (10N1–22), Assistant Deputy Under Secretary for Health (10N) and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), of the certification, provisional certification, or noncertification.

(b) Once a program has achieved recognition, the recognition will remain in effect unless the State requests that the recognition be withdrawn or the Under Secretary for Health makes a final decision that the facility or program management does not meet the standards of subpart D of this part. Recognition of a program will apply only to the facility as it exists at the time of recognition; any annex, branch, enlargement, expansion, or relocation must be separately recognized.

(c) Both during the application process for recognition and after the Under Secretary for Health has recognized a facility, VA may survey the facility as necessary to determine if the facility and program management comply with the provisions of this part. Generally, VA will provide advance notice to the State before a survey occurs; however, surveys may be conducted without notice. A survey, as necessary, will cover all parts of the facility, and include a review and audit of all records of the program that have a bearing on compliance with any of the requirements of this part (including any

reports from State or local entities). For purposes of a survey, at the request of the director of the VA medical center of jurisdiction, the State home adult day care health program management must submit to the director a completed VA Form 10–3567, ''Staffing Profile'', set forth at 38 CFR 58.10. The director of the VA medical center of jurisdiction will designate the VA officials to survey the facility. These officials may include physicians; nurses; pharmacists; dietitians; rehabilitation therapists; social workers; and representatives from health administration, engineering, environmental management systems, and fiscal officers.

(d) If the director of the VA medical center of jurisdiction determines that the State home facility or program management does not meet the standards of this part, the director will notify the State home program manager in writing of the standards not met. The director will send a copy of this notice to the State official authorized to oversee operations of the facility, the VA Network Director (10N1–22), the Assistant Deputy Under Secretary for Health (10N), and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114). The letter will include the reasons for the decision and indicate that the State has the right to appeal the decision.

(e) The State must submit an appeal to the Under Secretary for Health in writing within 30 days of receipt of the notice of failure to meet the standards. In its appeal, the State must explain why the determination is inaccurate or incomplete and provide any new and relevant information not previously considered. Any appeal that does not identify a reason for disagreement will be returned to the sender without further consideration.

(f) After reviewing the matter, including any relevant supporting documentation, the Under Secretary for Health will issue a written determination that affirms or reverses the previous determination. If the Under Secretary for Health decides that the State home facility or program management does not meet the standards of subpart D of this part, the Under Secretary for Health will withdraw recognition and stop paying per diem for care provided on and after the date of the decision. The decision of the Under Secretary for Health will constitute a final VA decision. The Under Secretary for Health will send a copy of this decision to the State home facility and to the State official authorized to oversee the operations of the State home.

(g) In the event that a VA survey team or other VA medical center staff identifies any condition at the State home facility that poses an immediate threat to public or patient safety or other information indicating the existence of such a threat, the director of the VA medical center of jurisdiction will immediately report this to the VA Network Director (10N1–22), Assistant Deputy Under Secretary for Health (10N), Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), and State official authorized to oversee operations of the State home.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

## Subpart C—Per Diem Payments

### § 52.40 Monthly payment.

(a)(1) During Fiscal Year 2002, VA will pay monthly one-half of the total cost of each eligible veteran's adult day health care for each day the veteran is in a facility recognized as a State home for adult day health care, not to exceed $34.64 per diem.

(2) Per diem will be paid only for a day that the veteran is under the care of the facility at least six hours. For purposes of this paragraph a day means

(i) Six hours or more in one calendar day; or

(ii) Any two periods of at least 3 hours each (but each less than six hours) in any two calendar days in a calendar month.

(3) As a condition for receiving payment of per diem under this part, the State must submit a completed VA Form 10–5588, ''State Home Report and Statement of Federal Aid Claimed.'' This form is set forth in full at 38 CFR 58.11.

(4) Initial payments will not be made until the Under Secretary for Health recognizes the State home. However, payments will be made retroactively for care that was provided on and after the date of the completion of the VA survey of the facility that provided the basis for determining that the facility met the standards of this part.

(5) As a condition for receiving payment of per diem under this part, the State must submit to the VA medical center of jurisdiction for each veteran the following completed VA forms: 10–10EZ, ''Application for Medical Benefits'', and 10–10SH, ''State Home Program Application for Care—Medical Certification'', at the time of enrollment and with any request for a change in the level of care (nursing home, domiciliary or hospital care). These forms are set forth in full at 38 CFR 58.12 and 58.13, respectively. If the program is eligible to receive per diem payments for adult day health care for a veteran, VA will pay per diem under this part from the date of receipt of the completed forms required by this paragraph (a)(5), except that VA will pay per diem from the day on which the veteran was enrolled in the program if VA receives the completed forms within 10 days after enrollment.

(b) For determining ''the one-half of the total cost'' under paragraph (a)(1) of this section, total per diem costs for an eligible veteran's adult day health care consist of those direct and indirect costs attributable to adult day health care at the facility divided by the total number of participants enrolled in the adult day health care program. Relevant cost principles are set forth in the Office of Management and Budget (OMB) Circular number A–87, dated May 4, 1995, ''Cost Principles for State, Local, and Indian Tribal Governments'' (OMB Circulars are available at the addresses in 5 CFR 1310.3).

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

### § 52.50 Eligible veterans.

A veteran is an eligible veteran under this part if VA determines that the veteran meets the definition of a veteran in 38 U.S.C. 101, is not barred from receiving this VA care under 38 U.S.C. 5303–5303A, needs adult day health care, and is within one of the following categories:

(a) Veterans with service-connected disabilities;

(b) Veterans who are former prisoners of war;

(c) Veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty;

(d) Veterans who receive disability compensation under 38 U.S.C. 1151;

(e) Veterans whose entitlement to disability compensation is suspended because of the receipt of retired pay;

(f) Veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that such veterans' continuing eligibility for adult day health care is provided for in the judgment or settlement described in 38 U.S.C. 1151;

(g) Veterans who VA determines are unable to defray the expenses of necessary care as specified under 38 U.S.C. 1722(a);

(h) Veterans of the Mexican Border period or of World War I;

(i) Veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation or for a disorder associated with service in the Southwest Asia theater of operations during the Gulf War, as provided in 38 U.S.C. 1710(e);

(j) Veterans who agree to pay to the United States the applicable co-payment determined under 38 U.S.C. 1710(f) and 1710(g), if they seek VA (U.S. Department of Veterans Affairs) hospital, nursing home, or outpatient care.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

## Subpart D—Standards

### § 52.60 Standards applicable for payment of per diem.

The provisions of this subpart are the standards that a State home and program management must meet for the State to receive per diem for adult day health care provided at that facility.

### § 52.61 General requirements for adult day health care program.

Adult day health care must be a therapeutically-oriented outpatient day program, which provides health maintenance and rehabilitative services to participants. The program must provide individualized care delivered by an interdisciplinary health care team and support staff, with an emphasis on helping participants and their caregivers to develop the knowledge and skills necessary to manage care requirements in the home. Adult day health care is principally targeted for complex medical and/or functional needs of geriatric patients.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

### § 52.70 Participant rights.

The participant has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. The program management must protect and promote the rights of each participant, including each of the following rights:

(a) *Exercise of rights.* (1) The participant has the right to exercise his or her rights as a participant of the program and as a citizen or resident of the United States.

(2) The participant has the right to be free of interference, coercion, discrimination, and reprisal from the program management in exercising his or her rights.

(3) The participant has the right to freedom from chemical or physical restraint.

(4) In the case of a participant determined incompetent under the laws of a State by a court of jurisdiction, the rights of the participant are exercised by the person appointed under State law to act on the participant's behalf.

(b) *Notice of rights and services.* (1) The program management must inform the participant both orally and in writing in a language that the participant understands of his or her rights and all rules and regulations governing participant conduct and responsibilities during enrollment in the program. Such notification must be made prior to or upon enrollment and periodically during the participant's enrollment.

(2) Participants or their legal representatives have the right—

(i) Upon an oral or written request, to access all records pertaining to them including current participant records within 24 hours (excluding weekends and holidays); and

(ii) After receipt of their records for review, to purchase, at a cost not to exceed the community standard, photocopies of the records or any portions of them upon request and with two working days advance notice to the facility management.

(3) Participants have the right to be fully informed in language that they can understand of their total health status.

(4) Participants have the right to refuse treatment, to refuse to participate in patient activities, to refuse to participate in experimental research, and to formulate an advance directive as specified in paragraph (a)(7) of this section.

(5) The program management must inform each participant before, or at the time of enrollment, and periodically during the participant's stay, of services available in the facility and of charges for those services to be billed to the participant.

(6) The program management must furnish a written description of legal rights which includes a statement that the participant may file a complaint with the State (agency) concerning participant abuse and neglect.

(7) The program management must have written policies and procedures regarding advance directives (e.g., living wills). These requirements include provisions to inform and provide written information to all participants concerning the right to accept or refuse medical or surgical treatment and, at the individual's option, formulate an advance directive. This includes a written description of the facility's policies to implement advance directives and applicable State law.

(8) Notification of changes. (i) Program management must immediately inform the participant; consult with the primary physician; and notify the participant's legal representative or an interested family member when there is—

(A) An accident involving the participant which results in injury and has the potential for requiring physician intervention;

(B) A significant change in the participant's physical, mental, or psychosocial status (e.g., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) A decision to transfer or discharge the participant from the program.

(ii) The program management must also promptly notify the participant and the participant's legal representative or interested family member when there is a change in resident rights under Federal or State law or regulations as specified in paragraph (b)(1) of this section.

(iii) The program management must record and periodically update the address and phone number of the participant's legal representative, or interested family member, and the primary physician.

(c) *Free choice.* (1) The participant has the right to—

(i) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the participant's well-being; and

(ii) Unless determined incompetent or otherwise determined to be incapacitated under the laws of the State, participate in planning care and treatment or changes in care and treatment.

(2) If the participant is determined incompetent or otherwise determined to be incapacitated under the laws of the State, the participant's legal representative or interested family member(s) has the right to participate in planning care and treatment or changes in care and treatment.

(d) *Privacy and confidentiality.* Participants have the right to privacy and confidentiality of their personal and clinical records.

(1) Participants have a right to privacy in their medical treatment and personal care.

(2) Except as provided in paragraph (d)(3) of this section, participants may approve or refuse the release of personal

and clinical records to any individual outside the facility.

(3) The participant's right to refuse release of personal and clinical records does not apply when—

(i) The participant is transferred to another health care institution; or

(ii) The release is required by law.

(e) *Grievances.* A participant has the right to—

(1) Voice grievances without discrimination or reprisal. Participants may voice grievances with respect to treatment received and not received; and

(2) Prompt efforts by facility management to resolve grievances the participant may have, including those with respect to the behavior of other participants.

(f) *Examination of survey results.* A participant has the right to—

(1) Examine the results of the most recent VA survey with respect to the program. The program management must make the results available for examination in a place readily accessible to participants, and must post a notice of their availability; and

(2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

(g) *Work.* The participant has the right to—

(1) Refuse to perform services for the facility;

(2) Perform services for the facility, if he or she chooses, when—

(i) The facility has documented the need or desire for work therapy in the plan of care;

(ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;

(iii) Compensation for (work therapy) paid services is at or above prevailing rates; and

(iv) The participant agrees to the work therapy arrangement described in the plan of care.

(h) *Access and visitation rights.* (1) The program management must provide immediate access to any participant by the following:

(i) Any representative of the Under Secretary for Health;

(ii) Any representative of the State;

(iii) The State long-term care ombudsman;

(iv) Immediate family or other relatives of the participant subject to the participant's right to deny or withdraw consent at any time; and

(v) Others who are visiting subject to reasonable restrictions and the participant's right to deny or withdraw consent at any time.

(2) The program management must provide reasonable access to any participant by any entity or individual that provides health, social, legal, or other services to the participant, subject to the participant's right to deny or withdraw consent at any time.

(3) The program management must allow representatives of the State Ombudsman Program to examine a participant's clinical records with the permission of the participant or the participant's legal representative, subject to State law.

(i) *Telephone.* The participant has the right to reasonable access to use a telephone where calls can be made without being overheard.

(j) *Personal property.* The participant has the right to have at least one change of personal clothing.

(k) *Self-administration of drugs.* An individual participant may self-administer drugs if the interdisciplinary team has determined that this practice is safe for the individual and is a part of the care plan.

(Authority: 38 U.S.C. 101, 501, 1741–1743)
(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

### § 52.71 Participant and family caregiver responsibilities.

The program management has a written statement of participant and family caregiver responsibilities that are posted in the facility and provided to the participant and caregiver at the time of the intake screening. The Statement of responsibilities must include the following:

(a) Treat personnel with respect and courtesy;

(b) Communicate with staff to develop a relationship of trust;

(c) Make appropriate choices and seek appropriate care;

(d) Ask questions and confirm understanding of instructions;

(e) Share opinions, concerns, and complaints with the program director;

(f) Communicate any changes in the participant's condition;

(g) Communicate to the program director about medications and remedies used by the participant;

(h) Let the program director know if the participant decides not to follow any instructions or treatment; and

(i) Communicate with the adult day health care staff if the participant is unable to attend the adult day health care program.

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

### § 52.80 Enrollment, transfer and discharge rights.

(a) Participants in the adult day health care program must meet the provisions of this part that apply to participants and—

(1) Must meet at least two of the following indicators:

(i) Dependence in two or more activities of daily living (ADLs).

(ii) Dependence in three or more instrumental activities of daily living (IADLs).

(iii) Advanced age, i.e., 75 years old or over.

(iv) High use of medical services, i.e., three or more hospitalizations in past 12 months; or 12 or more hospitalizations, outpatient clinic visits; or emergency evaluation unit visits, in the past 12 months.

(v) Diagnosis of clinical depression.

(vi) Recent discharge from nursing home or hospital.

(vii) Significant cognitive impairment, particularly when characterized by multiple behavior problems;

(2) Must have a supportive living arrangement sufficient to meet their health care needs when not participating in the adult day health care program; and

(3) Must be able to benefit from the adult day health care program.

(b) *Transfer and discharge.* (1) *Definition.* Transfer and discharge includes movement of a participant to a program outside of the adult day health care program whether or not that program or facility is in the same physical plant.

(2) *Transfer and discharge requirements.* All participants' preparedness for discharge from adult day health care must be a part of a comprehensive care plan. The possible reasons for discharge must be discussed with the participant and family members at the time of intake screening. Program management must permit each participant to remain in the program, and not transfer or discharge the participant from the program unless—

(i) The transfer or discharge is necessary for the participant's welfare and the participant's needs cannot be met in the adult day health care setting;

(ii) The transfer or discharge is appropriate because the participant's health has improved sufficiently so the participant no longer needs the services provided in the adult day health care setting;

(iii) The safety of individuals in the program is endangered;

(iv) The health of individuals in the program would otherwise be endangered;

(v) The participant has failed, after reasonable and appropriate notice, to

pay for participation in the adult day health care program; or

(vi) The adult day health care program ceases to operate.

(3) *Documentation.* When the facility transfers or discharges a participant under any of the circumstances specified in paragraphs (b)(2)(i) through (vi) of this section, the primary physician must document the reason for such action in the participant's clinical record.

(4) *Notice before transfer.* Before a facility transfers or discharges a participant, the program management must—

(i) Notify the participant and a family member or legal representative of the participant of the transfer or discharge and the reasons for the move in writing and in a language and manner they can understand;

(ii) Record the reasons in the participant's clinical record; and

(iii) Include in the notice the items described in paragraph (a)(6) of this section.

(5) *Timing of the notice.* (i) The notice of transfer or discharge required under paragraph (b)(4) of this section must be made by program management at least 30 days before the participant is transferred or discharged, except when specified in paragraph (b)(5)(ii) of this section.

(ii) Notice may be made as soon as practicable before transfer or discharge when—

(A) The safety of individuals in the program would be endangered;

(B) The health of individuals in the program would be otherwise endangered;

(C) The participant's health improves sufficiently so the participant no longer needs the services provided by the adult day health care program;

(D) The resident's needs cannot be met in the adult day health care program.

(6) *Contents of the notice.* The written notice specified in paragraph (b)(4) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the participant is transferred or discharged, if any;

(iv) A statement that the participant has the right to appeal the action to the State official responsible for the oversight of State Veterans Home programs; and

(v) The name, address and telephone number of the State long-term care ombudsman.

(7) *Orientation for transfer or discharge.* The program management must provide sufficient preparation and orientation to participants to ensure safe and orderly transfer or discharge from the program.

(c) *Equal access to quality care.* The program management must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of source of payment.

(d) *Enrollment policy.* The program management must not require a third party guarantee of payment to the program as a condition of enrollment or expedited enrollment, or continued enrollment in the program. However, program management may require a participant or an individual who has legal access to a participant's income or resources to pay for program care from the participant's income or resources, when available.

(e) *Hours of operation.* Each adult day health care program must provide at least 8 hours of operation five days a week. The hours of operation must be flexible and responsive to caregiver needs.

(f) *Caregiver support.* The adult day health care program must develop a Caregiver Program which offers mutual support, information and education.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

### § 52.90 Participant behavior and program practices.

(a) *Restraints.* (1) The participant has a right to be free from any chemical or physical restraints imposed for purposes of discipline or convenience. When a restraint is applied or used, the purpose of the restraint is reviewed and is justified as a therapeutic intervention and documented in the participant's clinical record.

(i) Chemical restraint is the inappropriate use of a sedating psychotropic drug to manage or control behavior.

(ii) Physical restraint is any method of physically restricting a person's freedom of movement, physical activity or normal access to his or her body.

(2) The program management uses a system to achieve a restraint-free environment.

(3) The program management collects data about the use of restraints.

(4) When alternatives to the use of restraint are ineffective, restraint is safely and appropriately used.

(b) *Abuse.* (1) The participant has the right to be free from mental, physical, sexual, and verbal abuse or neglect, corporal punishment, and involuntary seclusion.

(i) Mental abuse includes humiliation, harassment, and threats of punishment or deprivation.

(ii) Physical abuse includes hitting, slapping, pinching, kicking or controlling behavior through corporal punishment.

(iii) Sexual abuse includes sexual harassment, sexual coercion, and sexual assault.

(iv) Neglect is any impaired quality of life for an individual because of the absence of minimal services or resources to meet basic needs. Neglect may include withholding or inadequately providing food and hydration, clothing, medical care, and good hygiene. It also includes placing the individual in unsafe or unsupervised conditions.

(v) Involuntary seclusion is a participant's separation from other participants against his or her will or the will of his or her legal representative.

(2) [Reserved]

(c) *Staff treatment of participants.* The program management must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of participants and misappropriation of participant property.

(1) The program management must—

(i) Not employ individuals who—

(A) Have been found guilty of abusing, neglecting, or mistreating individuals by a court of law; or

(B) Have had a finding entered into an applicable State registry or with the applicable licensing authority concerning abuse, neglect, mistreatment of individuals or misappropriation of their property; and

(ii) Report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a program assistant or other program staff to the State oversight agency director and licensing authorities.

(2) The program management must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of participant property are reported immediately to the State oversight agency director and to other officials in accordance with State law through established procedures.

(3) The program management must have evidence that all alleged violations are thoroughly investigated, and must prevent potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the State oversight agency director or the designated representative and to other officials in accordance with State law within five working days of the incident, and appropriate corrective action must be taken if the alleged violation is verified.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

**§ 52.100 Quality of life.**

Program management must provide an environment and provide or coordinate care that supports the quality of life of each participant by maximizing the individual's potential strengths and skills.

(a) *Dignity.* The program management must promote care for participants in a manner and in an environment that maintains or enhances each participant's dignity and respect in full recognition of his or her individuality.

(b) *Self-determination and participation.* The participant has the right to—

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care;

(2) Interact with members of the community both inside and outside the program; and

(3) Make choices about aspects of his or her life in the program that are significant to the participant.

(c) *Participant and family concerns.* The program management must document any concerns submitted to the management of the program by participants or family members.

(1) A participant's family has the right to meet with families of other participants in the program.

(2) Staff or visitors may attend participant or family meetings at the group's invitation.

(3) The program management must respond to written requests that result from group meetings.

(4) The program management must listen to the views of any participant or family group and act upon the concerns of participants and families regarding policy and operational decisions affecting participant care in the program.

(d) *Participation in other activities.* A participant has the right to participate in social, religious, and community activities that do not interfere with the rights of other participants in the program.

(e) *Therapeutic participant activities.* (1) The program management must provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well being of each participant.

(2) The activities program must be directed by a qualified professional who is a qualified therapeutic recreation specialist or an activities professional who—

(i) Is licensed, if applicable, by the State in which practicing; and

(ii) Is certified as a therapeutic recreation specialist or an activities professional by a recognized certifying body.

(3) A critical role of the adult day health care program is to build relationships and create a culture that supports, involves, and validates the participant. Therapeutic activity refers to that supportive culture and is a significant aspect of the individualized plan of care. A participant's activity includes everything the individual experiences during the day, not just arranged events. As part of effective therapeutic activity the adult day health care program must:

(i) Provide direction and support for participants, including breaking down activities into small, discrete steps or behaviors, if needed by a participant;

(ii) Have alternative programming available for any participant unable or unwilling to take part in group activity;

(iii) Design activities that promote personal growth and enhance the self-image and/or improve or maintain the functioning level of participants to the extent possible;

(iv) Provide opportunities for a variety of involvement (social, intellectual, cultural, economic, emotional, physical, and spiritual) at different levels, including community activities and events;

(v) Emphasize participants' strengths and abilities rather than impairments and contribute to participant feelings of competence and accomplishment; and

(vi) Provide opportunities to voluntarily perform services for community groups and organizations.

(f) *Social services.* (1) The facility management must provide medically-related social services to participants and their families.

(2) An adult day health care program must employ or contract for a qualified social worker to provide social services.

(3) Qualifications of social worker. A qualified social worker is an individual with—

(i) A bachelor's degree in social work from a school accredited by the Council of Social Work Education (Note: A master's degree social worker with experience in long-term care is preferred);

(ii) A social work license from the State in which the State home is located, if license is offered by the State; and

(iii) A minimum of one year of supervised social work experience in a health care setting working directly with individuals.

(4) The facility management must have sufficient social worker and support staff to meet participant and family social services needs. The adult day health care social services must:

(i) Provide counseling to participants and families/caregivers;

(ii) Facilitate the participant's adaptation to the adult day health care program and active involvement in the plan of care, if appropriate;

(iii) Arrange for services not provided by the adult day health care program and work with these resources to coordinate services;

(iv) Serve as participant advocate by asserting and safeguarding the human and civil rights of the participants;

(v) Assess signs of mental illness and/or dementia and make appropriate referrals;

(vi) Provide information and referral for persons not appropriate for adult day health care program;

(vii) Provide family conferences and serve as liaison between participant, family/caregiver and program staff;

(viii) Provide individual or group counseling and support to caregivers and participants;

(ix) Conduct support groups or facilitate participant or family/caregiver participation in support groups;

(x) Assist program staff in adapting to changes in participants' behavior; and

(xi) Provide or arrange for individual, group, or family psychotherapy for participants' with significant psychosocial needs.

(5) Space for social services must be adequate to ensure privacy for interviews.

(g) *Environment.* The program management must provide—

(1) A safe, clean, comfortable, and homelike environment, and support the participants' ability to function as independently as possible and to engage in program activities;

(2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;

(3) Private storage space for each participant sufficient for a change of clothes;

(4) Interior signs to facilitate participants' ability to move about the facility independently and safely;

(5) A clean bed available for acute illness, when indicated;

(6) A shower for resident's need, when indicated;

(7) Adequate and comfortable lighting levels in all areas;

(8) Comfortable and safe temperature levels; and

(9) Comfortable sound levels.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

**§ 52.110 Participant assessment.**

The program management must conduct initially, semi-annually and as required by a change in the participant's condition a comprehensive, accurate, standardized, reproducible assessment of each participant's functional capacity.

(a) *Intake screening.* An intake screening must be completed to determine the appropriateness of the adult day health care program for each participant.

(b) *Enrollment orders.* The program management must have physician orders for the participant's immediate care and a medical assessment, including a medical history and physical examination, within a time frame appropriate to the participant's condition, not to exceed 72 hours after enrollment, except when an examination was performed within five days before enrollment and the findings were provided and placed in the clinical record on enrollment.

(c) *Comprehensive assessments.* (1) The program management must make a comprehensive assessment of a participant's needs using (on and after January 1, 2002) the Minimum Data Set for Home Care (MSD–HC) Instrument Version 2.0, August 2, 2000.

(2) Frequency. Participant assessments must be completed—

(i) No later than 14 calendar days after the date of enrollment; and

(ii) Promptly after a significant change in the participant's physical, mental, or social condition.

(3) Review of assessments. Program management must review each participant no less than once every six months and as appropriate and revise the participant's assessment to assure the continued accuracy of the assessment.

(4) Use. The results of the assessment are used to develop, review, and revise the participant's individualized comprehensive plan of care, under paragraph (e) of this section.

(d) *Accuracy of assessments.* (1) *Coordination.* (i) Each assessment must be conducted or coordinated with the appropriate participation of health professionals.

(ii) Each assessment must be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment.

(2) *Certification.* Each person who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(e) *Comprehensive care plans.* (1) The program management must develop an individualized comprehensive care plan for each participant that includes measurable objectives and timetables to meet a participant's physical, mental, and psychosocial needs that are identified in the comprehensive assessment. The care plan must describe the following—

(i) The services that are to be provided by the program and by other sources to attain or maintain the participant's highest physical, mental, and psychosocial well-being as required under § 52.120;

(ii) Any services that would otherwise be required under § 52.120 but are not provided due to the participant's exercise of rights under § 52.70, including the right to refuse treatment under § 52.70(b)(4);

(iii) Type and scope of interventions to be provided in order to reach desired, realistic outcomes;

(iv) Roles of participant and family/caregiver; and

(v) Discharge or transition plan, including specific criteria for discharge or transfer.

(2) A comprehensive care plan must be—

(i) Developed within 21 calendar days from the date of the adult day care enrollment and after completion of the comprehensive assessment;

(ii) Assigned to one team member for the accountability of coordinating the completion of the interdisciplinary plan;

(iii) Prepared by an interdisciplinary team that includes the primary physician, a registered nurse with responsibility for the participant, social worker, recreational therapist and other appropriate staff in disciplines as determined by the participant's needs, the participation of the participant, and the participant's family or the participant's legal representative; and

(iv) Periodically reviewed and revised by a team of qualified persons after each assessment.

(3) The services provided or arranged by the facility must—

(i) Meet professional standards of quality; and

(ii) Be provided by qualified persons in accordance with each participant's written plan of care.

(f) *Discharge summary.* Prior to discharging a participant, the program management must prepare a discharge summary that includes—

(1) A recapitulation of the participant's care;

(2) A summary of the participant's status at the time of the discharge to include items in paragraph (c)(2) of this section; and

(3) A discharge/transition plan related to changes in service needs and changes in functional status that prompted another level of care.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

**§ 52.120 Quality of care.**

Each participant must receive, and the program management must provide, the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

(a) *Reporting of sentinel events.* (1) Definition. A *sentinel event* is an adverse event that results in the loss of life or limb or permanent loss of function.

(2) Examples of sentinel events are as follows:

(i) Any participant death, paralysis, coma or other major permanent loss of function associated with a medication error; or

(ii) Any suicide or attempted suicide of a participant, including suicides following elopement (unauthorized departure) from the program; or

(iii) Any elopement of a participant from the program resulting in a death or a major permanent loss of function; or

(iv) Any procedure or clinical intervention, including restraints, that result in death or a major permanent loss of function; or

(v) Assault, homicide or other crime resulting in a participant's death or major permanent loss of function; or

(vi) A participant's fall that results in death or major permanent loss of function as a direct result of the injuries sustained in the fall; or

(vii) A serious injury requiring hospitalization.

(3) The program management must report sentinel events to the director of the VA medical center of jurisdiction within 24 hours of identification. The director of the VA medical center of jurisdiction must report sentinel events

to the VA Network Director (10N1–22), Assistant Deputy Under Secretary for Health (10N), and Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), within 24 hours of identification and/or notification by the State home.

(4) The program management must establish a mechanism to review and analyze a sentinel event resulting in a written report no later than 10 working days following the event. The purpose of the review and analysis of a sentinel event in an adult day health care program is to prevent future injuries to residents, visitors, and personnel.

(b) *Activities of daily living.* Based on the comprehensive assessment of a resident, the program management must ensure that—

(1) A participant's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. This includes the participant's ability to—

(i) Bathe, dress, and groom;

(ii) Transfer and ambulate;

(iii) Toilet; and

(iv) Eat.

(2) A participant is given the appropriate treatment and services to maintain or improve his or her abilities specified in paragraph (b)(1) of this section.

(3) A participant who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, hydration, grooming, personal and oral hygiene, mobility, and bladder and bowel elimination.

(c) *Vision and hearing.* To ensure that participants receive proper treatment and assistive devices to maintain vision and hearing abilities, the program management must, if necessary, assist the participant and family—

(1) In making appointments; and

(2) Arranging for transportation to and from the office of a practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

(d) *Pressure ulcers.* Based on the comprehensive assessment of a participant, the program management must ensure that—

(1) A participant who enters the program without pressure ulcers does not develop pressure ulcers unless the individual's clinical condition demonstrates that they were unavoidable; and

(2) A participant having pressure ulcers receives necessary treatment and services to promote healing, prevent infection and prevent new ulcers from developing.

(e) *Urinary and fecal incontinence.* Based on the participant's comprehensive assessment, the program management must ensure that—

(1) A participant who enters the program without an indwelling catheter is not catheterized unless the participant's clinical condition demonstrates that catheterization was necessary;

(2) A participant who is incontinent of urine receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible; and

(3) A participant who has persistent fecal incontinence receives appropriate treatment and services to treat reversible causes and to restore as much normal bowel function as possible.

(f) *Range of motion.* Based on the comprehensive assessment of a participant, the program management must ensure that—

(1) A participant who enters the program without a limited range of motion does not experience reduction in range of motion unless the participant's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(2) A participant with a limited range of motion receives appropriate treatment and services to increase range of motion and/or to prevent further decrease in range of motion.

(g) *Mental and psychosocial functioning.* Based on the comprehensive assessment of a participant, the program management must ensure that a participant who displays mental or psychosocial adjustment difficulty, receives appropriate treatment and services to correct the assessed problem.

(h) *Accidents.* The program management must ensure that—

(1) The participant environment remains as free of accident hazards as is possible; and

(2) Each participant receives adequate supervision and assistance devices to prevent accidents.

(i) *Nutrition.* Based on a participant's comprehensive assessment, the program management must ensure, by working with the family, that a participant—

(1) Maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the participant's clinical condition demonstrates that this is not possible; and

(2) Receives a therapeutic diet when a nutritional deficiency is identified.

(j) *Hydration.* The program management must provide each participant with sufficient fluid intake during the day to maintain proper hydration and health.

(k) *Unnecessary drugs.* (1) *General.* Each participant's drug regimen must be free from unnecessary drugs. An unnecessary drug is any drug when used:

(i) In excessive dose (including duplicate drug therapy); or

(ii) For excessive duration; or

(iii) Without adequate monitoring; or

(iv) Without adequate indications for its use; or

(v) In the presence of adverse consequences which indicate the dose should be reduced or discontinued; or

(vi) Any combinations of the reasons in paragraphs (k)(1)(i) through (v) of this section.

(2) *Antipsychotic drugs.* Based on a comprehensive assessment of a participant, the program management must ensure that—

(i) Participants who have not used antipsychotic drugs are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition as diagnosed by the primary physician and documented in the clinical record; and

(ii) Participants who use antipsychotic drugs receive gradual dose reductions, and behavioral interventions, unless clinically contraindicated, in an effort to discontinue these drugs.

(l) *Medication errors.* The program management must ensure that—

(1) Medication errors are identified and reviewed on a timely basis; and

(2) Strategies for preventing medication errors and adverse reactions are implemented.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

### § 52.130 Nursing services.

The program management must provide an organized nursing service with a sufficient number of qualified nursing personnel to meet the total nursing care needs, as determined by participant assessment and individualized comprehensive plans of care, of all participants in the program.

(a) There must be at least one registered nurse on duty each day of operation of the adult day health care program. This nurse must be currently licensed by the State and must have, in writing, administrative authority, responsibility, and accountability for the functions, activities, and training of

the nursing and program assistants. VA recommends that this nurse be a geriatric nurse practitioner or a clinical nurse specialist.

(b) The number and level of nursing staff is determined by the authorized capacity of participants and the nursing care needs of the participants.

(c) Nurse staffing must be adequate for meeting the standards of this part.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

**§ 52.140 Dietary services.**

The program management must provide each participant with a nourishing, palatable, well-balanced meal that proportionally meets the daily nutritional and special dietary needs of each participant.

(a) *Food and nutritional services.* The program management provides and/or contracts with a food service entity and provides and/or contracts sufficient support personnel competent to carry out the functions of the food service.

(1) The program management must employ a qualified dietitian either part-time or on a contract consultant basis to provide nutritional guidance.

(2) A qualified dietitian is one who is qualified based upon registration by the Commission on Dietetic Registration of the American Dietetic Association.

(3) The dietitian must—

(i) Conduct participant nutritional assessments and recommend nutritional intervention as appropriate.

(ii) Consult and provide nutrition education to participants, family/caregivers, and program staff as needed.

(iii) Consult and provide education and training to the food service staff.

(iv) Monitor and evaluate participants receiving enteral tube feedings and parenteral line solutions, and recommend changes as appropriate.

(b) *Menus and nutritional adequacy.* (1) The participant's total dietary intake is of concern but is not the adult day health care program's responsibility.

(2) The program is responsible for the meals served in the facility.

(c) *Food.* Each participant receives and the program provides—

(1) Food prepared by methods that conserve nutritive value, flavor, and appearance;

(2) Food that is palatable, attractive, and at the proper temperature;

(3) Food prepared in a form designed to meet individual needs; and

(4) Substitutes offered of similar nutritive value to participants who refuse food served.

(d) *Therapeutic diets.* (1) Therapeutic diets must be prescribed by the primary care physician.

(2) Special, modified, or therapeutic diets must be provided as necessary for participants with medical conditions or functional impairments.

(3) An adult day health care program must not admit nor continue to serve a participant whose dietary requirements cannot be accommodated by the program.

(e) *Frequency of meals.* (1) At regular times comparable to normal mealtimes in the community, each participant may receive and program management must provide at least two meals daily for those veterans staying more than four hours and at least one meal for those staying less than four hours.

(2) The program management must offer snacks and fluids as appropriate to meet the participants' nutritional and fluid needs.

(f) *Assistive devices.* The program management must provide special eating equipment and utensils for participants who need them.

(g) *Sanitary conditions.* The program must—

(1) Procure food from sources approved or considered satisfactory by Federal, State, or local authorities;

(2) Store, prepare, distribute, and serve food under sanitary conditions; and

(3) Dispose of garbage and refuse properly.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

**§ 52.150 Physician services.**

As a condition of enrollment in adult day health care program, a participant must obtain a written physician order for enrollment. Each participant must remain under the care of a physician.

(a) *Physician supervision.* The program management must ensure that—

(1) The medical care of each participant is supervised by a primary care physician;

(2) Each participant's medical record must contain the name of the participant's primary physician; and

(3) Another physician is available to supervise the medical care of participants when their primary physician is unavailable.

(b) *Frequency of physician reviews.* (1) The participant must be seen by the primary physician at least annually and as indicated by a change of condition.

(2) The program management must have a policy to help ensure that adequate medical services are provided to the participant.

(3) At the option of the primary physician, required reviews in the program after the initial review may alternate between personal physician reviews and reviews by a physician assistant, nurse practitioner, or clinical nurse specialist in accordance with paragraph (e) of this section.

(c) *Availability of acute care.* The program management must provide or arrange for the provision of acute care when it is indicated.

(d) *Availability of physicians for emergency care.* In case of an emergency, the program management must provide or arrange for the provision of physician services when the program has participants under its care.

(e) *Physician delegation of tasks.* (1) A primary physician may delegate tasks to:

(i) A certified physician assistant or a certified nurse practitioner, or

(ii) A clinical nurse specialist who—

(A) Is acting within the scope of practice as defined by State law; and

(B) Is under the supervision of the physician.

(2) The primary physician may not delegate a task when the provisions of this part specify that the primary physician must perform it personally, or when the delegation is prohibited under State law or by the facility's own policies.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

**§ 52.160 Specialized rehabilitative services.**

(a) *Provision of services.* If specialized rehabilitative services such as, but not limited to, physical therapy, speech therapy, occupational therapy, and mental health services for mental illness are required in the participant's comprehensive plan of care, program management must—

(1) Provide the required services; or

(2) Obtain the required services and equipment from an outside resource, in accordance with § 52.210(h), from a provider of specialized rehabilitative services.

(b) Specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

**§ 52.170 Dental services.**

(a) Program management must, if necessary, assist the participant and family/caregiver—

(1) In making appointments; and

(2) By arranging for transportation to and from the dental services.

(b) Program management must promptly assist and refer participants with lost or damaged dentures to a dentist.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

**§ 52.180 Administration of drugs.**

The program management must assist with the management of medication and have a system for disseminating drug information to participants and program staff.

(a) *Procedures.* (1) The program management must provide reminders or prompts to participants to initiate and follow though with self-administration of medications.

(2) The program management must establish a system of records to document the administration of drugs by participants and/or staff.

(3) The program management must ensure that drugs and biologicals used by participants are labeled in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration dates when applicable.

(4) The program management must store all drugs, biologicals, and controlled schedule II drugs listed in 21 CFR 1308.12 in locked compartments under proper temperature controls, permit only authorized personnel to have access, and otherwise comply with all applicable State and Federal laws.

(b) *Service consultation.* The program management must employ or contract for the services of a pharmacist licensed in the State in which the program is located who provides consultation, as needed, on all the provision of drugs.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

**§ 52.190 Infection control.**

The program management must establish and maintain an infection control program designed to prevent the development and transmission of disease and infection.

(a) *Infection control program.* The program management must—

(1) Investigate, control, and prevent infections in the program participants and staff; and

(2) Maintain a record of incidents and corrective actions related to infections.

(b) *Preventing spread of infection.* (1) The program management must prevent participants or staff with a communicable disease or infected skin lesions from attending the adult day health care program if direct contact will transmit the disease.

(2) The program management must require staff to wash their hands after each direct participant contact for which hand washing is indicated by accepted professional practice.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

**§ 52.200 Physical environment.**

The physical environment must be designed, constructed, equipped, and maintained to protect the health and safety of participants, personnel and the public.

(a) *Life safety from fire.* The facility must meet the applicable provisions of the National Fire Protection Association's NFPA 101, Life Safety Code, 2000 edition. Incorporation by reference this document was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The document incorporated by reference is available for inspection at the Office of the Federal Register, Suite 700, 800 North Capitol Street, NW, Washington, DC, and the Department of Veterans Affairs, Office of Regulations Management (02D), Room 1154, 810 Vermont Avenue, NW., Washington, DC 20420. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555.)

(b) *Space and equipment.* (1) Program management must—

(i) Provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide participants with needed services as required by these standards and as identified in each participant's plan of care; and

(ii) Maintain all essential mechanical, electrical, and patient care equipment in safe operating condition.

(2) Each adult day health care program, when it is co-located in a nursing home, domiciliary, or other care facility, must have its own separate designated space during operational hours.

(3) The indoor space for an adult day health care program must be at least 100 square feet per participant including office space for staff and must be 60 square feet per participant excluding office space for staff.

(4) Each program will need to design and partition its space to meet its own needs, but a minimal number of functional areas must be available. These include:

(i) A dividable multipurpose room or area for group activities, including dining, with adequate table-setting space.

(ii) Rehabilitation rooms or an area for individual and group treatments for occupational therapy, physical therapy, and other treatment modalities.

(iii) A kitchen area for refrigerated food storage, the preparation of meals and/or training participants in activities of daily living.

(iv) An examination and/or medication room.

(v) A quiet room (with at least one bed), which functions to isolate participants who become ill or disruptive, or who require rest, privacy, or observation, must include a bed. It should be separate from activity areas, near a restroom, and supervised.

(vi) Bathing facilities adequate to facilitate bathing of participants with functional impairments.

(vii) Toilet facilities and bathrooms easily accessible to people with mobility problems, including participants in wheelchairs. There must be at least one toilet for every eight participants. The toilets must be equipped for use by persons with limited mobility, easily accessible from all programs areas, i.e., preferably within 40 feet from that area, designed to allow assistance from one or two staff, and barrier-free.

(viii) Adequate storage space. There should be space to store arts and crafts materials, personal clothing and belongings, wheelchairs, chairs, individual handiwork, and general supplies. Locked cabinets must be provided for files, records, supplies, and medications.

(ix) An individual room for counseling and interviewing participants and family members.

(x) A reception area.

(xi) An outside space that is used for outdoor activities that is safe, accessible to indoor areas, and accessible to those with a disability. This space may include recreational space and garden area. It should be easily supervised by staff.

(c) *Furnishings* must be available for all participants. This must include functional furniture appropriate to the participants' needs. Furnishings must be attractive, comfortable, and homelike, while being sturdy and safe.

(d) *Participant call system.* The coordinator's station must be equipped to receive participant calls through a communication system from—

(1) Clinic rooms; and

(2) Toilet and bathing facilities.

(e) *Other environmental conditions.* The program management must provide

a safe, functional, sanitary, and comfortable environment for the participants, staff and the public. The program management must—

(1) Establish procedures to ensure that water is available to essential areas if there is a loss of normal water supply;

(2) Have adequate outside ventilation by means of windows, or mechanical ventilation, or a combination of the two;

(3) Equip corridors, when available, with firmly-secured handrails on each side; and

(4) Maintain an effective pest control program so that the facility is free of pests and rodents.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

**§ 52.210 Administration.**

An adult day health care program must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well being of each participant.

(a) *Governing body.* (1) The State must have a governing body, or designated person functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the program; and

(2) The governing body or State official with oversight for the program appoints the adult day health care program administrator who is:

(i) A qualified heath care professional experienced in clinical program management and, if required by the State, certified as a Certified Administrator in Adult Day Health Care; and

(ii) Responsible for the operation and management of the program including:

(A) Documentation of current credentials for each licensed independent practitioner employed by the program;

(B) Review of the practitioner's record of experience;

(C) Assessment of whether practitioners with clinical privileges act within the scope of privileges granted; and

(iii) Awareness of local trends in community adult day health care and other services, and participation in area adult day health care organizations.

(b) *Disclosure of State agency and individual responsible for oversight of facility.* The State must give written notice to the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420, at the time of the change, if any of the following change:

(1) The State agency and individual responsible for oversight of a State home facility;

(2) The State adult day health care program administrator; or

(3) The State employee responsible for oversight of the State home adult day health care program if a contractor operates the State program.

(c) *Required information.* The program management must submit the following to the director of the VA medical center of jurisdiction as part of the application for recognition and thereafter as often as necessary to be current:

(1) The copy of the legal and administrative action establishing the State-operated facility (e.g., State laws);

(2) Site plan of facility and surroundings;

(3) Legal title, lease, or other document establishing the right to occupy the facility;

(4) Organizational charts and the operational plan of the adult day health care program;

(5) The number of the staff by category indicating full-time, part-time and minority designation, annually;

(6) The number of adult day health care participants who are veterans and non-veterans, the number of veterans who are minorities and the number of non-veterans who are minorities, annually;

(7) Annual State Fire Marshall's report;

(8) Annual certification from the responsible State home showing compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (VA Form 10–0143A set forth at 38 CFR 58.14);

(9) Annual certification for Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707) (VA Form 10–0143 set forth at 38 CFR 58.15);

(10) Annual certification regarding lobbying in compliance with 31 U.S.C. 1352 (VA Form 10–0144 set forth at 38 CFR 58.16);

(11) Annual certification of compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1) as effectuated in 38 CFR part 18 (VA Form 10–0144A located at 38 CFR 58.17);

(d) *Percentage of veterans.* At least 75 percent of the program participants must be eligible veterans except that the veteran percentage need only be more than 50 percent if the facility was acquired, constructed, or renovated solely with State funds. All non-veteran participants must be veteran-related family members or gold star parents of veterans.

(e) *Management contract facility.* If a program is operated by an entity contracting with the State, the State must assign a State employee to monitor the operations of the facility. The State employee may also monitor other levels of care at a colocated facility, but must monitor the adult day health care facility and any colocated facility on a full-time onsite basis.

(f) *Licensure.* The facility and program management must comply with applicable State and local licensure laws.

(g) *Staff qualifications.* (1) The program management must employ on a full-time, part-time or consultant basis those professionals necessary to carry out the provisions of these requirements. Professional disciplines involved in participant care must include registered nurses, program assistants, physicians, social workers, rehabilitation therapists, dietitians, and therapeutic activity therapists and pharmacists. Other disciplines may be considered depending upon the participant and/or program needs.

(2) Professional staff must be licensed, certified, or registered in accordance with applicable State laws.

(3) The staff-participant ratio must be sufficient in number and skills (at least one staff to 4 to 6 participants) to ensure compliance with the standards of this part. There must be at least two responsible persons (paid staff members) at the adult day health care center at all times when there are two or more participants in attendance.

(4) Persons counted in the staff to participant ratio must spend at least 70 percent of their time in direct service with participants.

(5) All professional team members will serve in the role of case manager for designated participants.

(6) All personnel, paid and volunteer, will be provided appropriate training to maintain the knowledge and skills required for the participant needs.

(h) *Use of outside resources.* (1) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the program management must have that service furnished to participants by a person or agency outside the facility under a written agreement described in paragraph (h)(2) of this section.

(2) Agreements pertaining to services furnished by outside resources must specify in writing that the program management assumes responsibility for—

(i) Obtaining services that meet professional standards and principles that apply to professionals providing services in such a program; and

(ii) The timeliness of the services.

(i) *Medical director.* (1) The program management must provide a primary care physician to serve as medical director and a consultant to the interdisciplinary program team.

(2) The medical director is responsible for:

(i) Participating in establishing policies, procedures, and guidelines to ensure adequate, comprehensive services;

(ii) Directing and coordinating medical care in the program;

(iii) Ensuring continuous physician coverage to handle medical emergencies;

(iv) Participating in managing the environment by reviewing and evaluating incident reports or summaries of incident reports, identifying hazards to health and safety, and making recommendations to the adult day health care program administrator; and

(v) Monitoring employees' health status and advising the program administrator on employee health policies.

(3) The medical director may also provide hands-on assessment and/or treatment if authorized by the participant's primary care provider. In programs where a medical director is available to act as a member of the team and authorizes care, information concerning the care provided must be shared with the primary care physician who continues to provide the ongoing medical care.

(4) The program management must have written procedures for handling medical emergencies. The procedures must include, at least:

(i) Procedures for notification of the family;

(ii) Procedures for transportation arrangements;

(iii) Provision for an escort, if necessary; and

(iv) Procedures for maintaining a portable basic emergency information file for each participant that includes:

(A) Hospital preference;

(B) Physician of record and telephone number;

(C) Emergency contact (family);

(D) Insurance information;

(E) Medications/allergies;

(F) Current diagnosis and history; and

(G) Photograph for participant identification.

(j) *Required training of program assistants.* (1) Program assistants must have a high school diploma, or the equivalent, and must have at least one year of experience in working with adults in a health care setting. Program assistants also must complete the National Adult Day Services Association training course or complete equivalent training.

(2) The program management must not use any individual working in the program as a program assistant whether permanent or not unless:

(i) That individual is competent to provide appropriate services; and

(ii) That individual has completed training or is certified by the National Adult Day Services Association as a certified Program Assistant in Adult Day Services.

(3) Verification. Before allowing an individual to serve as a nurse aide or program assistant, program management must verify that the individual has successfully completed a training and competency evaluation program. Facilities must follow up to ensure that such an individual actually becomes certified, if available in the State.

(4) Multi-State registry verification. Before allowing an individual to serve as a nurse aide or program assistant, program management must seek information from every State registry established under HHS regulations at 42 CFR 483.156 which the facility believes may include information on the individual.

(5) Required retraining. If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.

(6) Regular in-service education. The program management must complete a performance review of every nurse aide or program assistant at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews. The in-service training must—

(i) Be sufficient to ensure the continuing competence of nurse aides or program assistants, but must be no less than 12 hours per year;

(ii) Address areas of weakness as determined in program assistants' performance reviews and address the special needs of participants as determined by the program staff; and

(iii) For program assistants or nurse aides providing services to individuals with cognitive impairments, address the care of the cognitively impaired.

(k) *Proficiency of program assistants.* The program management must ensure that program assistants or nurse aides are able to demonstrate competency in skills and techniques necessary to care for participants' needs, as identified through participant assessments, and described in the plan of care.

(l) *Laboratory and radiology results.* The program management must—

(1) Obtain laboratory or radiology results from the participant's primary physician to support the needs of its participants.

(2) Assist the participant and/or family/caregiver in making transportation arrangements to and from the source of laboratory or radiology services, if the participant needs assistance.

(3) File in the participant's clinical record laboratory or radiology reports that are dated and contain the name and address of the testing laboratory or radiology service.

(m) *Participant records.* (1) The facility management must maintain clinical records on each participant in accordance with accepted professional standards and practices that are—

(i) Complete;

(ii) Accurately documented;

(iii) Readily accessible; and

(iv) Systematically organized.

(2) Clinical records must be retained for—

(i) The period of time required by State law; or

(ii) Five years from the date of discharge if there is no requirement in State law.

(3) The program management must safeguard clinical record information against loss, destruction, or unauthorized use.

(4) The program management must keep confidential all information contained in the participant's records, regardless of the form or storage method of the records, except when release is required by—

(i) Transfer to another health care institution;

(ii) Law;

(iii) A third-party payment contract;

(iv) The participant; or

(v) The participant's legal representative.

(5) The clinical record must contain—

(i) Sufficient information to identify the participant;

(ii) A record of the participant's assessments;

(iii) The plan of care and services provided;

(iv) The results of any pre-enrollment screening conducted by the State; and

(v) Progress notes.

(n) *Quality assessment and assurance.* (1) Program management must maintain a quality improvement program and a quality improvement committee consisting of—

(i) A registered nurse;

(ii) A medical director designated by the program; and

(iii) At least three other members of the program's staff.

(2) The quality improvement committee—

(i) Must implement a quality improvement plan for the evaluation of its operation and services and review and revise annually; and

(ii) Must meet at least quarterly to identify quality of care issues; and

(iii) Must develop and implement appropriate plans of action to correct identified quality deficiencies; and

(iv) Must ensure that identified quality deficiencies are corrected within an established time period.

(3) The VA Under Secretary for Health may not require disclosure of the records of such committee unless such disclosure is related to the compliance with the requirements of this section.

(o) *Disaster and emergency preparedness.* (1) The program management must have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, bomb threats, and missing participants.

(2) The program management must train all employees in emergency procedures when they begin to work in the program, periodically review the procedures with existing staff, and carry out unannounced staff drills using those procedures.

(p) *Transfer procedure.* (1) The program management must have in effect a written transfer procedure that reasonably assures that—

(i) Participants will be transferred from the adult day health care program to the hospital, and ensured of timely admission to the hospital when transfer is medically appropriate as determined by a physician; and

(ii) Medical and other information needed for care and treatment of participants will be exchanged between the institutions.

(2) The transfer must be with a hospital sufficiently close to the adult day health care program to make transfer feasible.

(q) *Compliance with Federal, State, and local laws and professional standards.* The program management must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility. This includes the Single Audit Act of 1984 (31 U.S.C. 7501 et seq.) and the Cash Management Improvement Acts of 1990 and 1992 (31 U.S.C. 3335, 3718, 3720A, 6501, 6503).

(r) *Relationship to other Federal regulations.* In addition to compliance with the regulations set forth in this subpart, the program must meet the applicable provisions of other Federal laws and regulations, including but not limited to, those pertaining to nondiscrimination on the basis of race, color, national origin, handicap, or age (38 CFR part 18); protection of human subjects of research (45 CFR part 46), section 504 of the Rehabilitation Act of 1993 (29 U.S.C. 794); Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707); restrictions regarding lobbying (31 U.S.C. 1352); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1). Although these regulations are not in themselves considered requirements under this part, their violation may result in the termination or suspension of, or the refusal to grant or continue payment with Federal funds.

(s) *Intermingling.* A facility recognized as a State home for providing adult day health care may only provide adult day health care in the areas of the facility recognized as a State home for providing adult day health care.

(t) *VA management of State veterans homes.* Except as specifically provided by statute or regulations, VA employees have no authority regarding the management or control of State homes providing adult day health care.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

**§ 52.220 Transportation.**

Transportation of participants to and from the adult day health care facility must be a component of the overall program.

(a)(1) Except as provided in paragraph (a)(2) of this section, the adult day health care program management must provide or contract for transportation to enable participants, including persons with disabilities, to attend the program and to participate in facility-sponsored outings.

(2) The veteran or the family of a veteran may decline transportation offered by the adult day health care program management and make their own arrangements for the transportation.

(b) The adult day health care program management must have a transportation policy that includes routine and emergency procedures, with a copy of the relevant procedures located in all program vehicles.

(c) All vehicles transporting participants to and from adult day health care must be equipped with a device for two-way communication.

(d) All facility-provided and contracted transportation systems must meet local, State and federal regulations.

(e) The time to transport participant to or from the facility must not be more than 60 minutes except under unusual conditions, e.g., bad weather.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

[FR Doc. 02–150 Filed 1–4–02; 8:45 am]

BILLING CODE 8320–01–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

### Final Flood Elevation Determinations

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

**ACTION:** Final rule.

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

**EFFECTIVE DATE:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

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

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov*.

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

BFEs were also published in the **Federal Register**.

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

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

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

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

**National Environmental Policy Act**

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

**Regulatory Flexibility Act**

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

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

*Executive Order 12778, Civil Justice Reform.* This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 67**

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

Accordingly, 44 CFR Part 67 is amended to read as follows:

## PART 67—[AMENDED]

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

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

**§ 67.11 [Amended]**

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

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **HAWAII** | |
| **Maui County, (FEMA Docket No. B–7421)** | |
| *Unnamed Stream at Kuau Point:* | |
| Approximately 720 feet downstream of Hana Highway | *14 |
| Approximately 750 feet upstream of Hana Highway | *29 |
| **Maps are available for inspection** at the Department of Planning, 250 South High Street, Wailuku, Hawaii. | |
| **WASHINGTON** | |
| **Skokomish Indian Tribe, (FEMA Docket No. B–7421)** | |
| *Skokomish River:* | |
| Just downstream of State Route 106 | *16 |
| Approximately 3,000 feet upstream of U.S. Route 101 | *31 |
| **Maps are available for inspection** at the Natural Resources Office, North 541 Tribal Center Road, Shelton, Washington. | |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) | Communities affected |
|---|---|---|
| **CALIFORNIA** | | |
| **FEMA Docket No. (B–7420)** | | |
| *Alvarado Creek:* | | |
| At Pennsylvania Lane ext., approximately 1,000 feet downstream of 70th street | *379 | City of La Mesa, City of San Diego |
| Approximately 2000 feet downstream of Lake Murray Boulevard | *407 | |
| Approximately 900 feet downstream of Comanche Boulevard | *425 | |
| Approximately 300 feet upstream of Fletcher Parkway | *454 | |
| **ADDRESSES:** City of La Mesa: Maps are available for inspection at the Department of Public Works Community Development, City Hall, 8130 Allison Avenue, La Mesa, California. City of San Diego: Maps are available for inspection at the City Development Services Center, 1222 1st Avenue, 3rd Floor, San Diego, California. | | |
| **NEW MEXICO** | | |
| **FEMA Docket No. (B–7421)** | | |
| *Animas River:* | | |
| Approximately 1,300 feet downstream of Miller Avenue | +5,276 | City of Farmington, San Juan County. |
| Just upstream of Broadway Street | +5,304 | |
| Approximately 4,300 feet upstream of Browning Parkway | +5,361 | |
| *San Juan River:* | | |
| Approximately 8,600 feet downstream of Route 371 | +5,223 | |
| Approximately 2,200 feet downstream of Route 371 | +5,242 | |
| *Wyper Arroyo:* | | |
| Approximately 100 feet upstream of U.S. Highway 550 | +5,499 | |
| Just upstream of confluence of Wyper Arroyo Tributary | +5,559 | |
| Approximately 3,800 feet upstream of confluence of Wyper Arroyo Tributary | +5,668 | |
| *Wyper Arroyo Tributary:* | | |
| Just upstream of confluence of Wyper Arroyo | +5,559 | |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) | Communities affected |
|---|---|---|
| Approximately 3,450 feet upstream of confluence with Wyper Arroyo | +5,662 | |
| *Carl Arroyo:* | | |
| Approximately 1,700 feet downstream of U.S. Route 550 | +5,451 | |
| Just upstream of Winnifred Drive | +5,535 | |
| Approximately 3,900 feet upstream of Winnifred Drive | +5,635 | |
| *Hood Arroyo:* | | |
| Approximately 1,800 feet downstream of Hubbard Street | +5,403 | |
| Just upstream of Pinon Hills Blvd | +5,530 | |
| Approximately 850 feet upstream of Hogan Avenue | +5,714 | |
| *Hood Arroyo Tributary:* | | |
| Just upstream of Hogan Avenue | +5,640 | |
| Approximately 4,200 feet upstream of Hogan Avenue | +5,820 | |
| *Porter Arroyo:* | | |
| Approximately 1,300 feet downstream of Windsor Drive | +5,509 | |
| Just upstream of confluence of Porter Arroyo Tributary C | +5,622 | |
| Approximately 4,200 feet upstream of North College Road | +5,796 | |
| *Porter Arroyo Tributary C:* | | |
| At confluence with Porter Arroyo | +5.620 | |
| Approximately 1,300 feet upstream of confluence with Porter Arroyo | +5,654 | |
| *Porter Arroyo Tributary B:* | | |
| At confluence with Porter Arroyo | +5,645 | |
| Approximately 1,100 feet upstream of confluence with Porter Arroyo | +5,682 | |
| *Porter Arroyo Tributary A:* | | |
| At confluence with Porter Arroyo near North College Road | +5,670 | |
| Approximately 2,100 feet upstream of confluence with Porter Arroyo | +5,752 | |
| *Butler Arroyo:* | | |
| Just upstream of 30th Street | +5,508 | |
| Approximately 4,000 feet upstream of 30th Street | +5,606 | |
| *Dustin Arroyo:* | | |
| Approximately 400 feet downstream of 30th Street | +5,489 | |
| Approximately 700 feet upstream of Cerrillos Drive | +5,667 | |
| *Farmers Mutual Ditch:* | | |
| Approximately 300 feet downstream of Westland Park Drive | +5,227 | |
| Approximately 1,500 feet upstream of Westland Park Drive, near its divergence from San Juan River. | +5,236 | |
| *Westland Park Drive Runoff:* | | |
| Approximately 800 feet downstream of Westland Park Drive | +5,225 | |
| Approximately 150 feet upstream of Westland Park Drive | +5,235 | |

**ADDRESSES:**
City of Farmington:
Maps are available for inspection at City Hall, 800 Municipal Drive, Farmington, New Mexico.
San Juan County:
Maps are available for inspection at the Office of Building Inspector, 100 South Oliver, Aztec, New Mexico.

| **OREGON** | | |
|---|---|---|
| **FEMA Docket No. (B–7421)** | | |
| *Wagner Creek:* | | |
| Just upstream of Rapp Road | *1,654 | Jackson County |
| Approximately 1,100 feet upstream of a Private Culvert in the Stream Valley just south of the junction of Ashland Mine Road and Wagner Creek Road. | *2,201 | |
| At confluence with Bear Creek | *1,562 | City of Talent |
| Just upstream of Rouge Valley Highway 99 | *1,593 | |
| Just downstream of Rapp Road | *1,652 | |

**ADDRESSES:**
Jackson County:
Maps are available for inspection at the Roads, Parks and Planning Services, 10 South Oakdale Avenue, Medford, Oregon.
City of Talent:
Maps are available for inspection at City Hall, 204 East Main Street, Talent Oregon.

| **UTAH** | | |
|---|---|---|
| **FEMA Docket No. (B–7420)** | | |
| *Willow Creek (West):* | | |
| Just upstream of 11400 South Street | *4,362 | City of Draper |
| Approximately 100 feet upstream of 12300 South Street | *4,409 | |
| Approximately 1,250 feet upstream of 150 East Road | *4,441 | |
| | *2,201 | |
| *Midas Creek:* | | |
| At confluence with Jordan River | *4,322 | Salt Lake County. |
| Approximately 250 feet upstream of 3600 West Street | *4,603 | (Uninc. Areas), City of Riverton, City of South Jordan |

**ADDRESSES:**

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) | Communities affected |
|---|---|---|
| Salt Lake County (Unincorporated. Areas):<br>Maps are available for inspection at 2001 South State Street, Suite N3300, Salt Lake City, Utah.<br>City of Draper:<br>Maps are available for inspection at the Engineer Department, 12441 South 900 East, Draper, Utah.<br>City of Riverton:<br>Maps are available for inspection at City Hall, 949 East 12400 South Street, Riverton, Utah.<br>City of South Jordan:<br>Maps are available for inspection at 10996 South Redwood Road, South Jordan, Utah. | | |

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

Dated: December 19, 2001.

**Robert F. Shea,**

*Acting Administrator, Federal Insurance and Mitigation Administration.*

[FR Doc. 02–321 Filed 1–4–02; 8:45 am]

**BILLING CODE 6718–04–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 6 and 7

**[WT Docket No. 96–198; DA 01–2730]**

### Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons With Disabilities

**AGENCY:** Federal Communications Commission.

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

**SUMMARY:** This document announces the deadline by which providers of telecommunications services and manufacturers of telecommunications equipment and customer premises equipment must provide the Commission with the designation of an agent on whom service may be made of all notices, inquiries, orders, decisions, and other pronouncements of the Commission. Each provider and manufacturer must inform the Commission of its designation of an agent by January 31, 2002. The designation must include the agent's name or department designation, business address, telephone number, TTY number (if available), facsimile number, and Internet e-mail address.

**DATES:** The amendment to 47 CFR Part 6.18 and 7.18 published at 64 FR 63235 (November 19, 1999) will become effective January 31, 2002.

**FOR FURTHER INFORMATION CONTACT:** Jenifer Simpson (202) 418–0008 (voice), (202) 418–0034 (TTY) or Dana Jackson (202) 418–2247 (voice), (202) 418–7898 (TTY), Disabilities Rights Office, Consumer Information Bureau.

**SUPPLEMENTARY INFORMATION:** This designation of agent must be filed with the Commission's Secretary, Magalie Salas, Office of the Secretary, 445 12th Street, SW, Room TW–A325, Washington, DC, 20554. An additional copy should be sent to the Disabilities Rights Office, Consumer Information Bureau, Room 5–A741, 445 12th Street, SW, Washington, DC, 20554, Attn: Dana Jackson. We intend to continue posting the required information on the FCC's web site within the Consumer Information Bureau (CIB) and administering the posting within CIB's Disabilities Rights Office. Contact information for manufacturers is posted at *http://www.fcc.gov/cib/dro/section255_manu.html;* contact information for service providers is posted at *http://www.fcc.gov/cib/dro/service_providers.html;* and contact information for affected colleges and universities is posted at *http://www.fcc.gov/cib/dro/section255_colleges.html.*

This document is available to individuals with disabilities requiring accessible formats (electronic ASCII text, Braille, large print and audio) by contacting Brian Millin at (202) 418–7426 (voice), (202) 418–7365 (TTY), or by sending an email to fccinfo@fcc.gov.

On September 29, 1999, the Commission released a Report and Order and Further Notice of Inquiry (RO/FNOI) adopting a framework for implementing Section 255 of the Communications Act of 1934, as amended, which requires telecommunications equipment manufacturers and service providers to ensure that their equipment and services are accessible to persons with disabilities, to the extent that it is readily achievable to do so. A summary of this RO/FNOI was published in the **Federal Register**. See 64 FR 63277; 64 FR 63235.

Among the new rules is a requirement that equipment manufacturers and service providers each designate an agent for service of informal and formal complaints received by the Commission. This rule entails information collection requirements, and in the RO/FNOI, the Commission stated that ''some of the information collection requirements in this Report and Order are contingent on approval by OMB,'' including the designation of agent requirement. The information collection was approved by OMB on October 29, 2001. See OMB No. 3060–0833. This publication announces the effective date of the Commission's requirement that equipment manufacturers and service providers subject to the requirements of Section 255 of the Act designate an agent upon whom service may be made of all notices, inquiries, orders, decisions, and other pronouncements of the Commission in any matter before the Commission. The designation shall include, for both the manufacturer and the provider, a name or department designation, business address, telephone number, and if available, TTY number, facsimile number, and Internet e-mail address. More information on this subject can be found in the Commission's Public Notice, DA 01–2730, released December 19, 2001.

Federal Communications Commission.

**Thomas D. Wyatt,**

*Associate Chief (Operations), Consumer Information Bureau.*

[FR Doc. 01–32243 Filed 1–4–02; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

**[CS Docket No. 96–40; FCC 01–340]**

### Repeal of the Scrambling of Sexually Explicit Adult Video Service Programming Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission has repealed a section of its multichannel video and cable television

service rules dealing with the blocking of indecent sexually-oriented programming channels because the underlying statutory provision, 47 U.S.C. 561, was struck down as unconstitutional under the First Amendment.

**DATES:** Effective January 7, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ben Golant, Cable Services Bureau, at 202–418–7111.

**SUPPLEMENTARY INFORMATION:**

1. By this Order, released November 21, 2001, we repeal § 76.227 of the Commission's rules because the underlying statutory provision, section 641 of the Communications Act of 1934, as amended (47 U.S.C. 561), was found to be unconstitutional by the United States Supreme Court. These actions finalize the staff recommendations considered by the Commission earlier this year in the 2000 Biennial Regulatory Review.

2. Section 641 requires that any multichannel video programming distributor, including any cable television operator, ''providing sexually explicit adult programming or other programming that is indecent on any channel of its service primarily dedicated to sexually-oriented programming'' either ''fully scramble or otherwise fully block the video and audio portion of such channel so that one not a subscriber to such channel of programming does not receive it,'' or, alternatively, not provide that programming ''during the hours of the day (as determined by the [Federal Communications] Commission) when a significant number of children are likely to view it.'' The provision addressed concerns regarding ''signal bleed'' of channels that are devoted to sexually explicit adult programming. Signal bleed may occur when a multichannel video program distributor partially scrambles or otherwise partially blocks the signal on sexually explicit channels in an effort to prevent clear reception for those subscribers that do not pay for such channels. When sexually explicit material is offered on an analog service tier, some images and sounds may be clearly identifiable if the scrambling technology is inadequate.

3. Section 640 of the Communications Act, a companion to section 641, also was enacted as part of the Telecommunications Act of 1996. Section 640 provides that, ''upon request by a cable service subscriber, a cable operator shall, without charge, fully scramble or otherwise fully block the audio and video programming of each channel carrying such programming so that one not a subscriber does not receive it.'' One important difference between section 641 and section 640 is that the operator has a mandatory obligation to block programming to all households under section 641, rather than to individual households as provided in section 640. Further, section 640 applies only to cable operators while section 641 applies to all multichannel video programming distributors (''MVPDs''), including satellite carriers and open video system operators.

4. On March 5, 1996 (61 FR 9648, March 11, 1996), the Commission issued an Order to implement the new statutory language of section 641. At that time, the Commission adopted a rule incorporating section 641(a). The Commission also established an interim rule implementing section 641(b), providing that the programming described in subsection (a) may not be provided between the hours of 6 a.m. and 10 p.m. if not fully scrambled or fully blocked. The Commission did not address section 640 in that proceeding.

5. In 1996, Playboy Entertainment Group (''Playboy'') brought suit against the government asserting that section 641 was unconstitutional under the First Amendment. A three judge district court panel agreed with Playboy, finding that section 641 was not the least restrictive means to advance the government's interest in protecting children from exposure to sexually-related material. Indeed, the district court concluded that section 640 provides a less restrictive alternative means to protect those who wish to block out unwanted programming. On that basis, the district court issued a permanent injunction barring enforcement of section 641.

6. On direct appeal by the government, the Supreme Court ruled that the scrambling, blocking, and time shifting requirements of section 641, implemented by the Commission, violate the First Amendment. The Court concluded that section 641 was not the least restrictive means to protect individuals from exposure to sexually explicit programming. The Court held that compliance with the scrambling limitation of section 641 silenced ''protected speech for two-thirds of the day in every home in a cable service area, regardless of the presence or likely presence of children or of the wishes of the viewer.'' Like the district court below, the Court concluded that section 640 provides a less restrictive method for protecting children from exposure to explicit materials. The Court further found that the government failed to show that the alternative protection under section 640 would be so ineffective as to justify the more restrictive requirements of section 641.

7. Given the Court's decision regarding the unconstitutionality of the underlying statutory provision, we hereby repeal § 76.227 of our rules. We undertake these ministerial actions without the issuance of a Further Notice of Proposed Rulemaking because we believe that a further proceeding is unnecessary in light of the Supreme Court's decision in *Playboy* v. *FCC.*

8. We note that parents and others concerned about the availability of partially scrambled sexual content may rely on advances in technology to secure their households from undesirable programming. Specifically, we note that the phenomenon of signal bleed is present generally where the cable wire is directly connected to the television receiver. Signal bleed is circumvented when addressable analog set top boxes or digital set top boxes are connected to the set.

9. The Act provides several legal remedies, working in tandem with available technology, for those who object to certain content made available over a cable system. First, as section 640 requires, a cable operator must block programming, using any means, if such a request is made by a particular subscriber. Second, a cable subscriber may obtain a lock-box from the local cable operator if he or she wants to selectively block unwanted material. Finally, subscribers may purchase television sets equipped with V-Chips that enable individuals to block television programs, including sexually explicit content, assigned a particular rating by the video programmer.

10. Accordingly, IT IS ORDERED that § 76.227 of the Commission's rules IS REPEALED upon publication of this Order in the **Federal Register**.

11. IT IS FURTHER ORDERED that the Commission's rules ARE AMENDED as set forth in the rule changes.

12. These actions are taken pursuant to sections 4(i), 4(j) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303.

**List of Subjects in 47 CFR Part 76**

Cable television.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

## PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 is revised to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

**§ 76.227 [Removed and Reserved]**

2. Section 76.227 is removed and reserved.

[FR Doc. 02–332 Filed 1–4–02; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AH80**

## Endangered and Threatened Wildlife and Plants; Manatee Protection Areas in Florida

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), take final action to establish two additional manatee protection areas in Florida. This action is authorized under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407) (MMPA), to further recovery of the Florida manatee (*Trichechus manatus latirostris*) through a reduction in the level of take. In evaluating the need for additional manatee protection areas, we considered the needs of the manatee at an ecosystem level with the goal of ensuring that adequate protected areas are available throughout peninsular Florida to satisfy the biological requirements of the species, with a view toward the manatee's recovery. We are establishing two manatee refuges in Brevard County, in which certain waterborne activities will be restricted. These two sites are located within the water bodies commonly known as the Barge Canal and Sykes Creek. Watercraft operating within these water bodies will be required to proceed at ''slow speed'' throughout the year.

**DATES:** These designations will become effective upon the posting of appropriate signage designating the boundaries of the manatee protection areas and restrictions on watercraft operating within those boundaries. Such posting will not occur sooner than February 6, 2002.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Jacksonville Field Office, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.

**FOR FURTHER INFORMATION CONTACT:** David Hankla, Peter Benjamin, or Cameron Shaw (see **ADDRESSES** section), telephone 904/232–2580; or visit our website at *http://northflorida.fws.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background

The Florida manatee is Federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001) and is also federally protected under the MMPA (16 U.S.C. 1361–1407). It resides in freshwater, brackish, and marine habitats of coastal and inland waterways in the southeastern United States. The majority of this population resides in the waters of the State of Florida throughout the year, and nearly all manatees use the waters of peninsular Florida during the winter months. The manatee is a cold-intolerant species and requires warm waters (above 20 degrees Celsius (68 degrees Fahrenheit)) to survive during periods of cold weather. During the winter months many manatees rely on the warm water from natural springs and industrial outfalls for warmth. During the summer months they expand their range and are seen rarely as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

Recent information indicates that the overall manatee population has grown since the species was listed (U.S. Fish and Wildlife Service 2001). However, in order for us to determine that an endangered species has recovered to a point that it warrants removal from the List of Endangered and Threatened Wildlife and Plants, the species must have improved in status to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA. That is, threats to the species that caused it to be listed must be reduced or eliminated such that the species no longer fits the definitions of threatened or endangered. While indications of increasing population size are very encouraging, there is no indication that important threats to the species, including human-related mortality and harassment, have been effectively reduced or eliminated.

Human activities, particularly waterborne activities, are resulting in the take of manatees. Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm means an act which actually kills or injures wildlife (50 CFR 17.3). Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding or sheltering (50 CFR 17.3).

The MMPA sets a general moratorium, with certain exceptions, on the taking and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Harassment is defined under the MMPA as any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Human use of the waters of the southeastern United States has increased dramatically as a function of residential growth and increased visitation. This phenomenon is particularly evident in the State of Florida. The population of Florida has grown by 124 percent since 1970 (6.8 million to 15.2 million, U.S. Census Bureau) and is expected to exceed 18 million by 2010, and 20 million by the year 2020. According to a recent report by the Florida Office of Economic and Demographic Research (2000), it is expected that, by the year 2010, 13.7 million people will reside in the 35 coastal counties of Florida. In a parallel fashion to residential growth, visitation to Florida has increased dramatically. It is expected that Florida will have 83 million visitors annually by the year 2020, up from 48.7 million visitors in 1998. In concert with this increase of

human population growth and visitation is the increase in the number of watercraft which ply Florida waters. In 1999, 829,971 vessels were registered in the State of Florida. This is an increase in registered vessels of almost 20 percent since 1993 (Florida Fish and Wildlife Conservation Commission 2000). During this same period, the number of watercraft-related manatee mortalities has increased by 144 percent, from 35 to 82 deaths per year. The Florida Department of Community Affairs estimates that, in addition to boats belonging to Florida residents, between 300,000 and 400,000 boats registered in other States use Florida waters each year.

The large increase in human use of waters inhabited by manatees has had direct and indirect impacts on this endangered species. Direct impacts include injuries and death from vessel impacts, deaths and injuries from water control structure operations, lethal and sub-lethal entanglements with commercial and recreational fishing gear, and alterations of behavior due to harassment. Indirect impacts include habitat destruction and alteration, decreases in water quality throughout some aquatic habitats, decreases in quantity of warm water at natural sites, marine debris, and general disturbance from human activities.

Over the past 10 years, more than 62 percent of watercraft-related manatee mortality has taken place in seven Florida counties (Duval, Volusia, and Brevard, on the east coast; and Collier, Lee, Charlotte, and Hillsborough on the west coast) (U.S. Fish and Wildlife Service 2001). Manatee mortality has continued to climb steadily. Average annual mortality in the 1990s (227.9) was nearly twice that of the 1980s (118.2), and this trend continued in 2000, when 273 dead manatees were recorded. Total mortalities over the past 4 years have averaged 45 percent higher than in the early 1990s. When the record high total of 1996 is added (the year in which the red tide die-off inflated total mortality to 416 animals), average annual mortality over the past 5 years has been nearly 60 percent greater than in the early 1990s (Marine Mammal Commission 2001).

The continuing increase in the number of recovered dead manatees throughout Florida has been interpreted as evidence of increasing mortality rates (Ackerman *et al.* 1995). Between 1976 and 1999, the number of carcasses collected in Florida increased at a rate of 5.8 percent per year, and deaths caused by watercraft strikes increased by 7.2 percent per year (U.S. Fish and Wildlife Service 2001). Because the manatee has a low reproductive rate, a decrease in adult survivorship due to watercraft collisions could contribute to a long-term population decline (O'Shea *et al.* 1985). It is believed that a 1 percent change in adult survival likely results in a corresponding change in the rate of population growth or decline (Marmontel *et al.* 1997).

Collisions with watercraft are the largest source of human-related manatee deaths. Data collected during manatee carcass salvage operations in Florida indicate that a total of 979 manatees (from a total carcass count of 4,021) are confirmed victims of collisions with watercraft since 1976. This number may not accurately represent the actual number of watercraft-related mortalities since many of the mortalities listed as ''undetermined causes'' show evidence of collisions with vessels. Collisions with watercraft comprise approximately 24 percent of all manatee mortalities since 1976. The last 5 years have been record years for the number of watercraft-related mortalities, and watercraft-related deaths have become a larger proportion of total mortality. Since 1998, watercraft-related deaths have represented about 30 percent of all mortality, a 5 percent increase compared to the early 1990s. During the 1980s and 1990s the manatee population apparently grew; however, if population growth rate levels off and manatee mortality continues to increase, a decline in abundance is inevitable (Marine Mammal Commission 2001).

The second largest cause of human-related manatee mortality is entrapment in water control structures and navigation locks (U.S. Fish and Wildlife Service 2001). Manatees may be crushed in gates and locks or may be trapped in openings where flows prevent them from surfacing to breathe. Locks and gates were responsible for 159 manatee deaths between 1976 and 1999 (U.S. Fish and Wildlife Service 2000). While there are no well-defined patterns characterizing these mortalities, it is believed that periods of low rainfall increase the likelihood of manatees being killed in these structures. These periods require more frequent, large-scale movements of water, which require more frequent gate openings and closings in areas that attract manatees searching for fresh water.

Manatees are also affected by other human-related activities. Impacts resulting from these activities include death caused by entrapment in pipes and culverts; entanglement in ropes, lines, and nets; ingestion of fishing gear or debris; vandalism; and poaching. These activities have accounted for 106 manatee deaths since 1976, an average of 4 deaths per year. As with watercraft-related mortalities, other human-related deaths also appear to be increasing, with 31 deaths, approximately 3 percent of the total mortalities, recorded between 1997 and 2000 attributed to these sources. This is an average of 7.75 deaths per year over the last 4 years attributable to other human-related activities.

Harassment of manatees is a concern, particularly when it impedes the use of warm water areas critical to manatee survival during periods of cold weather. In particular, an increasing number of swimmers and divers are visiting Florida's waters to view and swim with the manatees. The presence of large numbers of people and the resultant disturbance has been documented to cause manatees to leave warm water areas (Jay Gorzaleny, Mote Marine Laboratory, personal communication 2001). On occasion, divers and swimmers have been observed attempting to pet, chase, ride, and even sit on manatees. This type of harassment may cause the manatee to leave warmer water to find relief from the harassment in colder areas where there are fewer people. Such responses, if they are instigated by human harassment, are considered take under the ESA and MMPA.

In response to these problems and the watercraft-related impacts in particular, conservation agencies, such as the Service and the Florida Fish and Wildlife Conservation Commission (FWC), have increased their emphasis on enforcement and compliance with manatee speed zones by adding new officers, conducting enforcement task force initiatives, increasing overtime, and increasing the proportion of law enforcement time devoted to manatee conservation. We are also continuing to evaluate development proposals that would increase watercraft traffic in manatee habitats where speed zones, signage, and enforcement are insufficient. To further address the negative effects of human actions on manatees, we are establishing two additional manatee refuges in Florida.

The authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA, and is codified in 50 CFR part 17, subpart J. We may, by regulation, establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees.

We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR

17.102, is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to a taking by harassment. A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to a taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and SCUBA diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredging and filling activities.

Throughout the development of this rule, many commenters cited the increase in the overall size of the manatee population as evidence that the establishment of additional manatee protection areas is not needed. Recent data regarding the size of the manatee population are very encouraging, and indicate that local, State, and Federal efforts to recover the manatee are working. However, we remain concerned that waterborne activities are resulting in take of manatees, which is not allowed under the ESA and MMPA, and which may slow or even impede further recovery. Our obligation under the ESA and MMPA is to further manatee recovery, so that we may someday achieve our goal of removing the species from the List of Endangered and Threatened Wildlife and Plants. This includes using available tools, as practicable, to reduce the level of human-related manatee mortality. The establishment of manatee protection areas is one such tool. We are pursuing other complementary tools simultaneously, as described in the next two sections.

**Synopsis of Manatee Lawsuit Settlement**

In *Save the Manatee Club, et al. v. Ballard, et al*, Civil No. 00–00076 EGS (D.D.C.), several organizations and individuals filed suit against the Fish and Wildlife Service and the U.S. Army Corps of Engineers (Corps) alleging violations of the Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), National Environmental Policy Act (NEPA), and Administrative Procedure Act (APA). Four groups representing development and boating interests intervened. Following extensive negotiations, a Settlement Agreement was approved by the court on January 5, 2001. Under the terms of the settlement, we agreed to the following:

• Submit a proposed rule for new refuges and sanctuaries to the **Federal Register** by April 2, 2001, and submit a final rule by September 28, 2001. Subsequent to the Federal settlement, the FWC also voted to settle *Save the Manatee v. Egbert*, Case No. 90–00–400CIV17–WS (N.D.Fla) (the State case). That settlement, which was entered by the court on November 7, 2001, calls for very similar protective measures in many of the locations included in our proposed rule. As a result of these simultaneous processes, the parties in the Federal lawsuit agreed to extend the April 2 deadline in an attempt to negotiate a means to avoid duplication of effort and better serve the public. Subsequent negotiations resulted in additional extensions, which resulted in the proposed rule being submitted to the **Federal Register** on August 3, 2001. We also agreed to evaluate the propriety of invocation of our emergency sanctuary/refuge designation authority. We published an advance notice of proposed rule-making in the **Federal Register** on September 1, 2000, and held a series of six public workshops in December 2000. We received 1,752 comments in response to the advance notice, and 396 people attended the public workshops. The proposed rule was published in the **Federal Register** on August 10, 2001 (66 FR 42318). A 60-day comment period followed this publication. In addition, we held four public hearings in September 2001, to provide the public an opportunity to comment. We held these hearings in Crystal River, Clearwater, Venice, and Melbourne, Florida. As a result of both the public hearings and written submissions, we received approximately 3,500 comments. These comments are summarized and responded to in the ''Summary of Comments and Recommendations'' section of this rule.

• Revise the Manatee Recovery Plan. We were required, by December 1, 2000, to make a draft revised Recovery Plan available for public review and comment, and to circulate our final revised Recovery Plan for signature no later than February 28, 2001. We published a draft revised Recovery Plan on November 30, 2000, and received over 500 comments. The Plaintiffs and Interveners agreed to new dates for development of a second draft and finalization of the Recovery Plan. As a result of the comments, we made substantial revisions to the Recovery Plan and subsequently issued a second draft for public review and comment on July 10, 2001. The Recovery Plan was finalized on October 30, 2001.

• Pursue a rulemaking proceeding to adopt incidental take regulations under the MMPA. By March 6, 2001, we were required to submit to the **Federal Register** an advance notice of proposed rulemaking; invite by letter the Corps and other entities that conduct activities which may influence factors relating to effects of watercraft on manatees to participate in the MMPA rulemaking process; and promptly provide copies of the **Federal Register** notice and invitation letters to the Plaintiffs and Interveners. The advance notice was published in the **Federal Register** on March 12, 2001, and copies of the advance notice and invitation letters were mailed to the Plaintiffs and Interveners on March 6, 2001. We will determine if any anticipated take by entities participating in the rulemaking process meets the requirements set forth in section 101(a)(5) of the MMPA, 16 U.S.C. 1371(a)(5). The process should result in—(1) if the requirements set forth in section 101(a)(5) of the MMPA are deemed satisfied, a proposed and final MMPA incidental take regulation; (2) preparation of appropriate NEPA documentation which will identify and assess the direct, indirect, and cumulative effects of the overall MMPA regulation (either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS)); (3) detailed assessments of agency programs, including cumulative effects on manatees and their habitat, for any activities covered under the regulation; and (4) consultation pursuant to section 7 of the ESA. We have determined that we will prepare an EIS in association with this action. Draft and final products are due on November 5, 2002, and May 5, 2003, respectively. If the requirements of the MMPA cannot be met, we must notify the Plaintiffs and Interveners as soon as practicable, and publish a negative finding in the **Federal Register** with the basis for denying the request. We must publish our negative finding by May 5, 2003. We will conduct public hearings on draft proposals as appropriate.

• By March 6, 2001, furnish Plaintiffs and Interveners with a letter describing how we will spend increased enforcement resources in FY 2001. This letter was sent on March 6, 2001.

• Revise, and make available for public review, our ''interim guidance'' for addressing potential manatee impacts associated with development and permitting of new watercraft access facilities. We were required to submit this document by March 6, 2001. The revised document appeared in the **Federal Register** on March 14, 2001 (66 FR 14924–32). We agreed to provide at

least thirty (30) days of public comment and actually provided sixty (60) days comment on the revised draft guidance. The final decision on the guidance was released to the public on August 13, 2001, and published in the **Federal Register** on August 21, 2001 (66 FR 43885).

• Provide written progress reports on the status of tasks agreed upon in the settlement agreement every 6 months. The first report was due and was provided to the parties on July 5, 2001.

• Provide copies of concurrence and non-concurrence letters to Plaintiffs and Interveners. Whenever we send a letter to the Corps in response to the Corps' determination that a project ''may affect'' the manatee or ''may affect but is not likely to adversely affect'' the manatee, we are required to concurrently make a copy of the correspondence available to the Plaintiffs and Interveners. This obligation may be satisfied by establishing a web-based system or by transmitting a copy of the letter by U.S. mail or electronically. Until such time as we establish a web-based system, we will forward copies by U.S. mail. These letters have been provided accordingly.

• Provide copies of Biological Opinions (BO). Whenever we issue a final BO regarding the effect of a particular project on manatees or manatee critical habitat, we are required to concurrently make a copy of that opinion available to the Plaintiffs and Interveners. This obligation may be satisfied by establishing a web-based system or by transmitting a copy of the opinion by U.S. mail or electronically. Until such time as we establish a web-based system, we will forward copies by U.S. mail. These biological opinions have been provided accordingly.

**Coordination With State Actions**

A network of manatee speed zones and sanctuaries has been established throughout peninsular Florida by Federal, State, and local governments. This existing structure works toward our goal of providing adequate protected areas throughout peninsular Florida to satisfy the biological requirements of the species. The purpose of our current evaluation is to identify gaps in the existing network and to propose appropriate measures for filling those gaps. We have focused the current action on those sites in which we have determined that Federal action can effectively address the needs in the particular area.

We recognize that the existing system of speed zones and sanctuaries has been established primarily by State and local governments. We also recognize the important role of our State and local partners, and we continue to support and encourage State and local measures to improve manatee protection.

The sites contained in the proposed rule were selected based on the criteria described below, prior to the disclosure of terms of the proposed settlement in the State case. That settlement contains a list of sites that the FWC will be evaluating for potential State designation of speed zones and sanctuaries. There is considerable overlap in terms of sites identified in that settlement and the sites discussed in our proposed rule. The fact that the State's list of sites is more expansive than the list in our proposed rule does not indicate a determination on our part that sites on the State's list, and not proposed by us, do not warrant designation, but is rather a reflection of our focusing on sites for which we believe we can provide the most effective protection for manatees, given our staffing and funding limitations.

We have been coordinating closely with the FWC, since the terms of their proposed settlement were disclosed, to determine which sites are most appropriate for State designation and which are better suited for Federal designation. At the time our proposed rule was prepared, final agreement had not been reached on the terms of the proposed State settlement. Pursuant to the terms of our settlement agreement described previously we were required to submit our proposed rule to the **Federal Register** by April 2, 2001, which was prior to the time in which the FWC made a final decision regarding sites they intend to evaluate. As stated previously, the deadline was extended on several occasions by agreement of the parties in an attempt to negotiate a means to avoid duplication of effort and better serve the public. Alternatives to the proposed rule were rejected by the Plaintiffs, as were requests for further extensions; therefore, considerable overlap is possible between our proposal and potential State action.

We strongly believe that the State should have leadership in establishing additional manatee protection areas. However, we also must meet our settlement obligations. Therefore, we will continue to participate in the State's evaluation. If the State adopts identical or comparable manatee protection measures to the ones we adopt, we will assess whether withdrawing Federal designations is appropriate. We will also continue to evaluate the other 14 proposed sites not currently included in this final rule, and will consider foregoing Federal designations if appropriate measures are adopted by the State or local governments. Additionally, we will continue to monitor other sites that may warrant additional protection. If we identify additional areas in need of protection, we will work with the State to establish necessary protection or may propose actions in the future, as appropriate.

Given that reducing watercraft-related manatee mortality is important to the recovery of the species, and given continuing watercraft-related mortality in Brevard County, we have decided to proceed with final designation of the Barge Canal and Sykes Creek sites. The remaining 14 sites in the proposed rule are somewhat less urgently in need of regulation than the Barge Canal and Sykes Creek sites. Therefore, we are deferring final rulemaking on these sites until December 1, 2002. At that time, if we determine that designation is warranted for the remaining 14 sites, and if the State has been unable to complete rulemaking on those sites, we intend to proceed with final rulemaking on those sites.

**Site Selection Process and Criteria**

In preparation for this action, we met with representatives from local, State, and Federal agencies and organizations involved in manatee research, management, and law enforcement. These meetings helped us to develop a list of sites throughout Florida and southeast Georgia that manatee experts believed should be considered for possible designation as manatee protection areas.

As mentioned above, we published an advance notice of proposed rulemaking in the **Federal Register** on September 1, 2000 (65 FR 53222). The purpose of the advance notice was to inform the public that we were initiating the process of investigating areas for possible designation as manatee protection areas, and to solicit initial public input. We received 1,752 responses to the advance notice. Of these, 1,737 supported our efforts to establish additional manatee protection areas, and 13 opposed them. The remaining two comments did not state a specific opinion.

We also conducted six public workshops throughout peninsular Florida to present the list of potential sites and to solicit public input. A total of 396 people attended the workshops, and 166 provided either oral or written comments. Of these, 79 were general in nature, either supporting our efforts to establish additional manatee protection areas (40) or opposing them (39). An additional 36 comments were not specific to the topic or discussed other

items. Fifteen commenters provided specific information or comments, including recommendations to increase enforcement, increase education, use new technology including satellite tracking of manatees, and other rule-related topics. Of the remaining comments, 28 specifically opposed and 8 specifically supported the establishment of additional manatee protection areas.

We selected sites for inclusion in the proposed rule from the list of sites developed through the preliminary meetings and the information gathered at the public workshops and in response to the advance notice. We based site selection on four factors: (1) Evidence that the site is used by manatees; (2) historic evidence of take (harm or harassment) of manatees at the site due to waterborne human activities; (3) the potential for additional take based on manatee and human use of the site; and (4) a determination that we could implement effective measures at the site to address the identified problem.

In documenting manatee use and historic manatee harm and harassment, we relied on the best available data including aerial survey data, manatee mortality data, and information from the Florida Marine Research Institute, Pathobiology Laboratory, and other information from State and Federal sources. These data were supplemented with information from manatee experts and the public, and our best professional judgment. In determining the potential effectiveness of our proposed actions, we considered the costs of managing and enforcing sites versus the benefits to manatee conservation. Costs associated with site management include installation and maintenance of appropriate signage, public education, and enforcement. In addition, designation of sanctuaries in the waters bordered by private property would entail additional administrative burdens in terms of identifying and providing access to affected residents. We considered these administrative burdens in selecting sites. Finally, we evaluated the effectiveness of our actions against the likely effectiveness of actions by State and/or local governments. As stated previously, it was our goal to avoid sites that could be most effectively addressed by State or local government. However, the parallel suits against the State and Federal governments limited early coordination in the development of this proposal and the proposed State settlement. Therefore, duplication of effort may occur in the future. To resolve this, as appropriate we will consider withdrawing any actions where comparable State or local protection is established. We did, however, make every effort to make our designations consistent with the existing adjacent State or local designations.

**Definitions**

''Idle speed'' means the minimum speed needed to maintain watercraft steerage.

''Planing'' means riding on or near the water's surface as a result of the hydrodynamic forces on a watercraft's hull, sponsons (projections from the side of a ship), foils, or other surfaces. A watercraft is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

''Slow speed'' means the speed at which a watercraft proceeds when it is fully off plane and completely settled in the water. Watercraft must not be operated at a speed that creates an excessive wake. Due to the different speeds at which watercraft of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A watercraft is not proceeding at slow speed if it is—(1) on a plane, (2) in the process of coming up on or coming off of plane, or (3) creating an excessive wake. A watercraft *is* proceeding at slow speed if it is fully off plane and completely settled in the water, and not creating an excessive wake.

''Slow speed (channel exempt)'' designates a larger area where slow speed is required, through which a maintained, marked channel is exempt from the slow speed requirement.

''Slow speed (channel included)'' means that the slow-speed designation applies to the entire marked area, including within the designated channel.

''Wake'' means all changes in the vertical height of the water's surface caused by the passage of a watercraft, including a vessel's bow wave, stern wave, and propeller wash, or a combination of these.

We have amended the definition of ''water vehicle'' to include the terms watercraft and vessel. These terms are used interchangeably in the rule and in 50 CFR subpart J.

We have also added personal watercraft to this definition.

**Areas Designated as Manatee Refuges**

*Barge Canal*

We are establishing a manatee refuge, containing approximately 276.3 hectares (ha) (682.7 acres), for the purpose of regulating watercraft operation to slow speed (channel included) for the entire length of the Barge Canal and extending eastward to the Canaveral Locks, Brevard County. These regulations will be in effect all year.

The Barge Canal serves as a travel corridor between the Indian and Banana Rivers for manatees and mariners alike. Aerial survey data indicate significant use of the site by manatees. Currently there are four areas within the Barge Canal that are regulated by the State as 40-kilometers-per-hour (25-miles per hour) zones with a 7.6-meters (25-feet) slow-speed shoreline buffer, all year, while the remainder of the Barge Canal is a slow-speed all-year zone. High-speed vessel operation in a confined migration corridor has an enhanced likelihood of resulting in take of manatees. There have been 16 watercraft-related manatee mortalities in the Barge Canal and its vicinity (Florida Marine Research Institute 2000). Requiring vessels to operate at slow speed would minimize the potential for take of manatees.

The State recently approved new regulations for Brevard County that would also designate the Barge Canal as a slow-speed zone; thereby providing a comparable level of manatee protection as our designation. A number of organizations and individuals have appealed the State's rulemaking and it is uncertain at this time when, or whether, the State's designation may take effect. Due to the urgent need to reduce watercraft-related mortality in the Barge Canal, we are proceeding with this designation at this time so that appropriate protective measures will be in place should the State be unable to implement its rule.

*Sykes Creek*

We are establishing a manatee refuge, containing 342.3 ha (845.8 acres) more or less, in Sykes Creek in Brevard County for the purpose of regulating watercraft operation to slow-speed (channel included) all year.

Aerial survey data indicate a significant amount of manatee use of Sykes Creek. Manatees consistently use this site for feeding, resting, and breeding. Like the Barge Canal, it is a fairly narrow water body and has been the site of 13 watercraft-related manatee mortalities (Florida Marine Research Institute 2000). High-speed vessel operation in this area has a high likelihood of resulting in take of manatees. Regulating vessels to proceed at slow speed minimizes the likelihood of a take incident.

The State recently approved new regulations for Brevard County that would also designate Sykes Creek as a

slow speed zone; thereby providing a comparable level of manatee protection as our designation. A number of organizations and individuals have appealed the State's rulemaking and it is uncertain at this time when, or whether, the State's designation may take effect. Due to the urgent need to reduce watercraft-related mortality in Sykes Creek we are proceeding with this designation at this time so that appropriate protective measures will be in place should the State be unable to implement its rule.

**Summary of Comments and Recommendations**

In the August 10, 2001, proposed rule (66 FR 42318), we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We sent direct notification of the proposal and public hearings to 3,258 institutions and individuals, including Federal and State agencies, county governments, scientific organizations, and interested parties. We published legal notices announcing the proposal, inviting public comment, and announcing the schedule for public hearings, on August 30, 2001, in the *Fort Myers News-Press, Citrus County Chronicle, Daytona Beach News-Journal, and Naples Daily News,* on August 31, 2001, in the *St. Petersburg Times, Miami Herald, Orlando Sentinel, Charlotte Sun-Herald, and Tallahassee Democrat,* and on September 4, 2001, in *Florida Today.* The comment period closed on October 9, 2001. We held the public hearings at the Plantation Inn and Conference Center in Crystal River, Florida, on September 10, 2001; Harborview Convention Center in Clearwater, Florida, on September 11, 2001; Holiday Inn in Venice, Florida, on September 12, 2001; and the Radisson Hotel & Conference Center in Melbourne, Florida, on September 13, 2001. Approximately 315 people were in attendance at the public hearings. We received oral comments from 121 individuals.

During the comment period, we received approximately 3,500 written and oral comments concerning the proposal. Most expressed opposition to, or concern about, the proposed designation; however, a number of individuals supported the proposed action. Opposition to the proposed designation primarily centered on perceived economic effects and potential inconvenience to boaters resulting from the action, and the adequacy of current State conservation actions to protect the manatee. We received comments from one State agency and the Governor of Florida. The remaining comments were from individuals or representatives of organizations or groups. The Governor of Florida stated support for the proposed action. The following is a summary of the comments received. Comments of a similar nature have been grouped together. Comments related to specific sites in the proposed rule, other than the two discussed in this final rule, will be addressed when final determinations for those sites are published.

*Comment 1:* The FWC noted our intention to consider withdrawing Federal designations should State or local governments enact comparable protective measures, and recommended that we define the means by which we will determine if actions by State or local governments provide a comparable level of protection.

*Response:* With regard to the Barge Canal and Sykes Creek, we believe that the pending State rule for Brevard County provides, on balance, a greater level of manatee protection than our rule. While we continue to have reservations regarding certain exemptions that have been granted by the State (see response to Comment 21 below), it is clear that the FWC's Brevard County rule, taken as a whole, provides needed protection to a far greater area than our rule. The FWC rule addresses the four areas identified in our proposed rule (Barge Canal, Sykes Creek, Haulover Canal, and Cocoa Beach Municipal Park) with similar or identical measures. Additionally, the FWC rule provides additional protection for manatees throughout the Indian River and Banana River within Brevard County by adding additional shoreline buffers and by eliminating several high-speed access channels. As such, should the State prevail in the challenge to their rulemaking, we believe that the Federal designation of the Barge Canal and Sykes Creek would likely be unnecessary. We view this as a prime example of how the greater resources of the FWC can enable them to accomplish more through State action than can be accomplished through Federal action.

With respect to the other 14 sites identified in our proposed rule, we cannot, at this time, identify specific standards for what would constitute comparable levels of protection. We recognize that there may be alternative means of implementing effective protective measures at many of these sites. These alternatives may be beyond our authority or resources to implement through our rulemaking, but may be available to State or local governments. Rather than limiting the options of State and local governments by insisting that they enact regulations identical to those we have proposed, we intend to participate fully in the State and local rulemaking processes and to articulate our views and recommendations regarding proposed protective measures as early as possible in those processes, particularly with respect to whether we consider potential protection measures to provide a comparable level of protection.

*Comment 2:* The FWC noted that appropriate posting of designated manatee protection areas is a critical element in the success of manatee protection zones, and recommended that we incorporate meetings with the FWC, appropriate Inland Navigation Districts, and local governments, to develop a clear delineation of responsibilities for posting signs for federally designated areas.

*Response:* We agree that appropriate signage is a critical element to the effective implementation of manatee protection areas. We will fully involve the FWC, appropriate Inland Navigation District and local governments, as well as the U.S. Coast Guard, in the development of sign plans for all Federal manatee protection areas.

*Comment 3:* The FWC expressed concern regarding enforcement of the new manatee protection areas and recommended that we clarify that we are responsible for enforcement of these areas. They also expressed concern that establishment of Federal manatee protection areas in and adjacent to State speed zones, which carry different penalties for violation, may generate confusion among the boating public.

*Response:* Manatee protection areas are only effective to the extent that boaters comply with posted regulations. As such, enforcement is an essential component of our effort to establish additional manatee protection areas. FWC officers are authorized to enforce Federal manatee protection area regulations, just as our law enforcement officers can and do enforce State manatee protection regulations. We welcome any assistance that the FWC can provide in the enforcement of these manatee protection areas, but we have made a commitment to ensure that adequate enforcement is provided for these areas. As noted above, the ability to adequately post and enforce designated sites was an important factor in our site selection process.

*Comment 4:* The FWC noted that we have deferred action on the remaining 14 sites identified in the proposed rule until December 2002 to give State and local governments the opportunity to enact comparable protective measures.

The FWC stated that they have no plans to consider rules in two of the sites in the proposed rule (Little Sarasota Bay and Shell Island) and that no final State action would be taken on sites in Tampa Bay by December 2002.

*Response:* We note that, while State action on the sites in Tampa Bay is not anticipated to occur prior to December 2002, local action is likely within this timeframe. Pinellas County has recently adopted an ordinance to provide increased manatee protection at the Bartow Power Plant, and we are currently evaluating the effectiveness of this action. Additionally, Hillsborough County is currently considering measures to improve manatee protection in much of Tampa Bay, including the Gannon and Tampa Electric Company power plant sites identified in our proposed rule. We will monitor the progress of these initiatives over the coming months to determine whether the proposed Federal designations are warranted.

Information regarding the Shell Island and Little Sarasota Bay sites was presented during the public comment period. We are continuing to evaluate the information and have made no decisions regarding final designation of these sites.

*Comment 5:* The FWC concurred with our determination that the data strongly support the decision to designate the Barge Canal and Sykes Creek as manatee protection areas. The FWC indicated they support our proposed designations for these areas, but recommended that the Federal rules be repealed if the FWC is successful in defending their recently adopted rules.

*Response:* We agree that, should the State prevail in the challenge to their Brevard County rule, the Federal designations would likely be unnecessary.

*Comment 6:* Several commenters recommended establishing manatee protection areas at several sites in addition to, or in lieu of, the 16 sites identified in the proposed rule. Other sites recommended for considerations included—the downtown Jacksonville portion of the St. John's River, Duval County; Goodby's Creek, Duval County; the Tomoka River, Volusia County; the Canaveral sewer outfall, Brevard County; the Indian River southeast of the railroad bridge causeway, Brevard County; the Haulover Canal observation area, Brevard County; the Riviera Beach power plant outfall, Palm Beach County; the Weeki Wachee River, Hernando County; the Little Manatee River, Hillsborough County; the Manatee and Braden Rivers, Manatee County; Charlotte Harbor, Charlotte County; Bokeelia Point, Lee County; San Carlos Bay, Lee County; the Caloosahatchee River, Lee County; Mullock Creek/Ten Mile Canal, Lee County; Estero Bay, Lee County; Everglades National Park, Collier and Monroe Counties; Faka Union Canal/Port of the Islands, Collier County; and Ten Thousand Islands/Chokoloskee Bay, Collier County.

*Response:* In designating manatee protection areas, we considered the needs of the species on an ecosystem level in an attempt to address life requirements of the manatee and to progress toward recovery of the species. Tempering this evaluation was the limited resources available to us, in terms of both staffing and funding, for accomplishing the establishment, maintenance, and regulation and enforcement of designated areas.

All of the above-mentioned sites, and many others, were considered at some point in the evaluation process. Some (such as the Weeki Wachee River, Goodby's Creek, and the Canaveral sewer outfall) did not meet our criteria for further consideration because adequate protective measures are currently in place at these sites and the likelihood of future take at these sites is limited, provided the existing regulations are appropriately enforced. Others (such as Caloosahatchee River, Everglades National Park, and Ten Thousand Islands/Chokoloskee Bay) did not meet our criteria for designation at this time because it is as yet unclear, based on current information, what additional protective measures could be implemented to effectively reduce on-going watercraft-related manatee mortality in these areas; however, we agree that these areas warrant further study. We note that even the commenter who recommended we take immediate action in the Ten Thousand Islands/Chokoloskee Bay area could offer no specific recommendation as to what to do in this area. We agree that the remaining sites mentioned above (the St. John's River in downtown Jacksonville, the Tomoka River, the Haulover Canal observation area, the Indian River southeast of the railroad bridge causeway, the Riviera Beach power plant outfall, the Little Manatee River, the Manatee and Braden Rivers, Charlotte Harbor, Bokeelia Point, Estero Bay, San Carlos Bay, Mullock Creek/Ten Mile Canal, and Faka Union Canal/Port of the Islands) do, or may, warrant further consideration, particularly if State or local efforts to improve manatee protection at these sites are unsuccessful, and if manatees do not make satisfactory progress toward recovery. However, we do not agree with the commenters that action at any of these sites is any more urgent than the actions identified in our proposed rule. As previously stated, we believe the sites included in this final rule are areas where federal action could be most effective for manatee conservation and is most urgently needed.

We are committed to continuing the protection of the manatee through a cooperative effort with our management partners at the Federal, State, and local levels, as well as efforts involving private entities and members of the public. We encourage State and local measures to improve manatee protection. Additionally, we have indicated that future actions could establish additional manatee protection areas if the need becomes apparent.

*Comment 7:* In recommending action at the sites identified in Comment 6, some commenters noted that several of the sites identified in our proposed rule were under consideration for designation by the FWC and/or local governments, and questioned our decision to include such sites in our proposed rule, given the likelihood that these sites would be appropriately regulated without Federal designation.

*Response:* Many of the sites in our proposed rule and the two sites in this final rule are currently under consideration for State action. We first became aware of this overlap when the Plaintiffs in the State lawsuit made the terms of the draft settlement agreement public. Due to our inability to discuss pending legal actions with the FWC, only the Plaintiffs were in a position to recognize the overlap and conflicts between the two settlement agreements. The Plaintiffs did not raise these conflicts to our attention. In fact we requested and received several extensions of the deadline for publishing the proposed rule, and during these extensions several options for resolving the situation were presented to the Plaintiffs. All were rejected along with our request for further extensions. As such, in order to meet our settlement obligations, we published the proposed rule. We are publishing this final rule at this time because we have determined that the actions are urgently needed at these sites and because these actions will fulfill our settlement obligations. We have deferred action on the remaining 14 sites because they are somewhat less urgently in need of action, and in order to allow for additional coordination with State and local governments.

*Comment 8:* One commenter stated that we excluded areas from the proposed rule that are, in their view, of extremely high priority, while including in our proposed rule a number of sites

that are, in their view, of much lower concern and/or are being addressed in other ways.

*Response:* We have concluded that the sites recommended by this commenter either do not warrant additional protection, or are of no higher priority than the sites identified in our proposed rule. We note that this commenter agreed that the Barge Canal and Sykes Creek are in need of improved manatee protection.

*Comment 9:* Many commenters recommended that we take action on sites identified in the proposed rule sooner than we have proposed. Many recommended that we make emergency designations on the Barge Canal, Sykes Creek, and the Blue Waters on the Homosassa River, and make final designations on other sites sooner than December 2002.

*Response:* We are firmly committed to establishing appropriate manatee protection in concert with State and local agencies and authorities. We believe that the State should have a lead role in establishing additional manatee protection areas. As such, we are providing latitude to the State and local governments to establish protection at 14 of the proposed manatee protection areas prior to finalizing Federal action. Such protection must be the same or comparable to that described in our proposed rule. We decided to expeditiously enact protection at the Barge Canal and Sykes Creek sites after evaluation of the significant amount of manatee use at these sites and the high probability of take, especially lethal take, at these sites, and after we determined that we could implement effective measures to reduce take at these sites. We determined that enacting emergency designations at any of the sites identified in our proposed rule was not prudent given the high level of public use of these waters and the high level of public interest/concern regarding this rulemaking. While we have determined that effective actions to reduce take over the long term can be implemented at the remaining 14 sites identified in the proposed rule, immediate action at these sites is not necessary to prevent take, nor is it necessary for the recovery of the species.

*Comment 10:* One commenter implied that we were violating the terms of the settlement agreement in the Federal case by failing to propose actions at sites identified by the Plaintiffs in the Federal case to be of high priority.

*Response:* The plain language of the settlement states (paragraph 11): ''The parties recognize that, in evaluating the need for refuges and sanctuaries the Service anticipates considering the needs of the manatee at an ecosystem level in order to ensure that adequate protected areas are available throughout peninsular Florida to satisfy the biological requirements of the species, with a view towards the manatees' recovery within the meaning of section 4 of the ESA.'' The settlement agreement does not require designation of any specific sites as manatee protection areas, and nowhere in the settlement is there a requirement that all protected areas established to meet the needs of the manatee be Federal. Clearly, in ''evaluating the need'' we must consider the existing condition of the ecosystem of which the manatee is a part, which includes an extensive network of protected areas designed specifically to meet the ''needs of the manatee.'' As long as appropriate protective measures are enacted, whether those actions are taken by State or Federal agencies does not matter.

The recovery plan for the Florida manatee makes clear that achieving the goal of recovery will necessarily require the cooperation and efforts of all stakeholders. Our proposed rule for manatee protection areas was also clear on this point when it stated:

> We acknowledge that there exists a network of manatee speed zones and sanctuaries, which have been established throughout peninsular Florida by Federal, State, and local governments. This existing structure works toward the above-stated goal of providing adequate protected areas throughout peninsular Florida to satisfy the biological requirements of the species. The purpose of our evaluation is to identify gaps in the existing network and to propose appropriate measures for filling those gaps.

As such, we have clearly met the letter and spirit of the settlement with respect to designation of manatee protection areas. As stated previously, we have concluded that many of the sites recommended by this commenter do not warrant Federal designation at this time, and we do not agree that the other sites recommended by the commenter are of any higher priority than the sites identified in the proposed rule.

*Comment 11:* One commenter noted that the sites identified in our proposed rule differ in some respects from the ''areas with inadequate protection'' identified in our Final Interim Strategy on Section 7 Consultations for Watercraft Access Projects that may Indirectly Affect the Florida Manatee (Final Interim Strategy) (66 FR 14924).

*Response:* The areas we have proposed for designation as Federal manatee protection areas are in some cases different from the waterbodies we identified as ''areas with inadequate protection'' for the purposes of the Final Interim Strategy. Specifically, of the 13 sites for which we proposed 16 manatee protection areas, only 6 are also identified as ''areas with inadequate protection'' in the Final Interim Strategy.

The standard for manatee protection areas is that such establishment is ''necessary to prevent the taking of one or more manatees'' (50 CFR 17.103). Because ''take'' is very broadly defined, action of some form could be justified for many coastal waters in the State of Florida. In order to focus our efforts in the current rulemaking, we defined four criteria for selecting sites as follows—(1) evidence that the site is used by manatees; (2) historic evidence of take (harm or harassment) of manatees at the site due to waterborne human activities; (3) the potential for additional take based on manatee and human use of the site; and (4) a determination that we could implement effective measures at the site to address the identified problem. Again, many sites throughout Florida could be argued to satisfy the first three criteria to some extent; however, the vast majority of sites do not satisfy criterion four because of limitations we face in terms of personnel and budget and because many areas present manatee protection problems due to circumstances that are difficult or impossible to correct within our manatee protection area authority.

On the other hand, ''areas with inadequate protection'' were identified in the context of conducting ESA section 7 consultations regarding U.S. Army Corps of Engineers authorization of boat access facilities. In this context, watercraft-related ''take'' of manatees is a distant indirect effect of the authorization of a boat access facility. While we agree that construction of boat access facilities is a potential contributing factor to watercraft-related take of manatees, in the vast majority of cases a direct cause and effect relationship does not exist between the construction of a marina, dock, or boat ramp, and watercraft-related take of manatees. As such, in order to be considered an ''area with inadequate protection'' in this context, the existing protection measures on a given waterbody must be such that the likely result of adding additional boat access to the area is a foreseeable increase in watercraft-related take. This could be because current protection measures are either totally lacking or woefully inadequate in areas with chronic watercraft-related take, or because of issues peculiar to the waterbody such that incidental take of manatees is

inevitable regardless of protective measures implemented.

As such, the standard for identifying a waterbody as an ''area with inadequate protection'' is generally higher than that for establishing a manatee protection area. This is why 7 of the 13 areas proposed as manatee protection areas are not also ''areas with inadequate protection.'' Conversely, 11 sites identified as ''areas with inadequate protection'' were not proposed as manatee protection areas. This is because either we determined that we could take no action at this time to effectively address the identified problem at a given site, or we decided that action at a particular site was not as high a priority as action at the sites contained in the proposed rule, and was therefore not included in the proposed rule due to limitations of staff and/or budget. Designation as manatee protection areas could be proposed for this latter group of sites in the future, if staffing and funding permit, and if such actions are determined to be necessary for the recovery of the species. Our list of ''areas with inadequate protection'' will continue to be updated as new information becomes available.

*Comment 12:* Some commenters expressed concern that requiring boats to travel at slow speed throughout the entire length of the Barge Canal and Sykes Creek would add an unreasonable amount of time to boat trips through this area. One commenter estimated that the designations would add 3 hours and 12 minutes to a round trip.

*Response:* In response to this concern we tested the amount of time required to travel from the southernmost end of the slow speed zone on Sykes Creek, through Sykes Creek and the Barge Canal to the Canaveral Locks. This represents the longest possible distance that would need to be traveled at slow speed under this final rule. Under the existing speed zones this trip currently takes approximately 50 minutes. Under the conditions established in this final rule, the same trip will take approximately 1 hour and 25 minutes; an increase in travel time of 35 minutes.

*Comment 13:* Several commenters requested that we hold additional public hearings.

*Response:* One public hearing was announced with the proposed rule. We scheduled an additional three hearings in order to provide ample opportunity for public comment. All hearings were well attended, and everyone in attendance was afforded the opportunity to express their comments and concerns. Additionally, we afforded a 60-day public comment period to allow for the submission of written comments. Finally, additional information regarding the proposed rule, including the material presented at the public hearings has been available on our website. We have also responded, in timely fashion, to requests for information from specific stakeholders throughout the rulemaking process. We believe that we have provided sufficient opportunity for public comment on this rulemaking.

*Comment 14:* Some commenters expressed concern that human safety could be compromised by forcing all boaters into narrow channels, bottlenecks, and other confined circumstances.

*Response:* We were very cognizant of human safety issues during the design phase of the manatee protection area planning process. Human safety while boating has always been and will continue to be the responsibility of the vessel operator. The two manatee protection areas in this final rule require vessels to proceed at slow speed and, as such, enhance boater safety while in these areas. At no site does the designation of these manatee protection areas place mariners in a position of encountering high-speed vessel traffic with no alternative safe route.

*Comment 15:* Some commenters expressed concern that human safety will be compromised by requiring vessel operators to proceed at slow speeds in the face of emergency situations, like rapidly approaching thunderstorms or medical emergencies.

*Response:* Federal regulations allow for an exemption to manatee protection area regulations in the event of emergency. Specifically, our regulations (50 CFR 17.105(c)) state that ''any person may engage in any activity otherwise prohibited by this subsection if such activity is reasonably necessary to prevent the loss of life or property due to weather conditions or other reasonably unforeseen circumstances, or to render necessary assistance to persons or property.''

*Comment 16:* Several commenters noted that the size of the manatee population appears to have increased over time, and questioned the need for additional protective measures.

*Response:* A discussion of the current status of the manatee population is provided in the ''Background'' section. Two of the criteria for determining whether species are endangered or threatened under the ESA are ''(D) the inadequacy of existing regulatory mechanisms and (E) other natural or manmade factors affecting its continued existence'' (16 USC 1533(a). Furthermore, the MMPA sets a general moratorium for the taking of marine mammals. Regardless of the size or status of the manatee population, we are required to ensure that take of manatees is minimized to the extent possible, and all take is prohibited unless authorized under the MMPA.

Minimizing, to the extent practical, the taking of manatees as a result of watercraft collisions is a top priority in manatee recovery and management programs. Currently, the areas addressed in this rule have a significant potential for ''take'' based on the amount of manatee use and are characterized by limited current protective regulations.

*Comment 17:* Several commenters stated that we should focus on better enforcement of existing regulations before imposing additional restrictions on boaters.

*Response:* This issue was identified as one of the alternatives addressed within the Manatee Protection Area Environmental Assessment. While improvements in both the enforcement and education arenas are laudable in enhancing manatee protection, such improvements may be of little effect when applied to areas without regulations or with inadequate protection to minimize the take of manatees. The State has placed an increased emphasis on enforcement, and we have made a substantial commitment to enforcing manatee protection areas over the past few years. We anticipate that these efforts will continue.

*Comment 18:* Some commenters recommended that we abstain from designation of Federal manatee protection areas and allow the State and local authorities to provide for manatee protection.

*Response:* We are the Federal agency responsible for manatee management and protection activities under both the ESA and the MMPA. As such, we must take an active role in regulatory activities involving the manatee. This in no way diminishes the important role that State and local agencies play, or the role of the private sector. Recognition is given to both State and local efforts to establish manatee protection, and we are committed to supporting these efforts. We have stated that the State should have leadership in establishing additional manatee protection areas. With this final rule, we have focused on sites where watercraft-related manatee mortality is highest, and where we determined that Federal action can effectively address the needs in the particular area. If the State is successful in implementing their pending rules for Brevard County, we will consider

withdrawing Federal designation of these sites.

*Comment 19:* Some commenters stated that the definition of ''Slow Speed'' is arbitrary and unenforceable, and recommended that we consider using some other standard, such as a ''miles per hour'' limit to regulate vessel speed.

*Response:* The definition of ''slow speed'' used in this rule is essentially the same as that used by the State in the Florida Manatee Sanctuary Act (F.A.C. 68C–22). This definition is generally understood by mariners and has proven to be enforceable. It is important to use a definition of ''slow speed'' that complements that used by the State. The sites included in this final rule are located in direct proximity to areas regulated by the State. The use of the same definition will ensure consistency and lessen confusion among the boating public.

The establishment of another definition of ''slow speed'' or the use of a ''miles per hour'' speed zone poses many problems. Establishment of a ''miles per hour'' standard would necessitate all boats operating in these zones to be equipped with accurate speedometers. This standard would also require enforcement officers to procure equipment and attend periodic training to enforce these conditions. Of more importance is that boats operating at speeds in excess of what is allowed under the current definition of ''slow speed'' pose increased threats to manatees. Boats proceeding while ''plowing the water'' with elevated bows, such as occurs when a vessel is operating at greater than ''slow speed,'' both obscure the forward vision of the operator and place the propulsion systems of the watercraft lower in the water. Both of these conditions increase the likelihood of a vessel collision with a manatee. With a subsequent increase of speed, the configuration of the vessel changes to one of planing. While this condition places the hull and outdrives of vessels higher in the water, it also decreases the reaction time needed by both the operator and the manatee to detect one another and take action to avoid collision.

*Comment 20:* Many commenters stated that we have not adequately evaluated the economic impact of these designations.

*Response:* The economic analysis conducted as part of this rulemaking determined that these actions would not have a significant economic impact. The two sites identified in this final rule will remain open for public access, albeit at ''slow speed'' travel. Through public hearings and public comment periods we sought information and comment on the activities occurring in these two sites. To our knowledge of the activities in these areas, and the fact that no activities will be prohibited although some may be inconvenienced by the need to proceed at slower speeds, we believe that this rule will not result in a significant economic dislocation.

*Comment 21:* One commenter noted that the commenter operates boat manufacturing facilities on the Barge Canal, and stated that the proposed designation would adversely affect their ability to economically continue boat testing operations resulting in a substantial economic loss to the commenter's company. The commenter requested that we provide an exemption to our rule, similar to the exemption granted by the State, to allow the commenter to continue to conduct up to 40 tests per month at speeds up to 35 miles per hour in a portion of the Barge Canal.

*Response:* Federal regulations provide exceptions to manatee protection area regulations only in limited circumstances (50 CFR 17.105(c)). We have assessed the information and recommendations presented by this commenter and have concluded that we do not have the authority under our existing regulations to grant an exception for this type of activity based on economic hardship.

The MMPA prohibits the take of marine mammals, including manatees. As such, we cannot authorize, or exempt from regulation, any activities that may cause the take of manatees, other than those necessary for protecting life and property. Nonetheless, we recognize that certain existing uses of some waterbodies could be adversely affected or eliminated by designation of manatee protection areas. We do not oppose continuation of these uses, provided it can be demonstrated that such uses will not cause take of manatees. Flexibility exists under the MMPA to except certain waterborne activities in refuges from the speed zone restrictions if it can be shown that such activities will be carried out under stringent conditions that prevent the take of manatees. At this time we intend to propose amendments to our regulations to incorporate a process by which we may evaluate and authorize specific activities within designated manatee protection areas, provided parties requesting such authorization can demonstrate that their activities will not cause the take of manatees.

*Comment 22:* One commenter suggested that our proposed rule was contrary to the spirit and intent of Executive Order 12866, because we did not contact the commenter directly regarding the impact the proposed rule may have upon the individual's operations.

*Response:* As part of the rulemaking process, we published an advance notice of proposed rulemaking in which we solicited information from the public regarding issues that should be addressed through the rulemaking. We also held six public workshops that provided additional opportunities for the public to provide input and voice concerns. With publication of the proposed rule, we afforded a 60-day period for submitting written comments, and held four public hearings. Through the commenter's participation in this process, we are aware of their concerns. We have responded to those concerns to the best of our ability with this final rule and our stated intent to pursue amendments to our regulations. We have also updated the information regarding the economic effects of the rule, as appropriate, to reflect information submitted by the commenter. These actions meet the requirements of Executive Order 12866.

*Comment 23:* Many commenters suggested that technological advances may now make it possible for boaters and manatees to better detect the presence of one another and thereby avoid collisions, and recommended that these technologies be employed instead of restricting boat speeds.

*Response:* Ongoing research is evaluating the sensory abilities of the manatee and the environmental factors that may affect these abilities. Potential technologies may enable boaters to better detect the presence of manatees. However, no technology is currently available that is proven to be effective in avoiding collisions between manatees and boats. For the foreseeable future, detection and avoidance technology will likely be used to supplement, rather than replace, traditional management strategies.

*Comment 24:* Some commenters recommended that we selectively regulate watercraft and provide exemptions for those not responsible for take of manatees. These commenters stated that most watercraft-related manatee mortality is caused by large vessels and/or barges, and that boats without propellers do not harm manatees.

*Response:* The manatee mortality database contains information on the necropsy results of over 4,000 manatees. From this large information source, several interesting aspects of watercraft-related manatee mortality may be surmised. It is impossible to determine, in most cases, the size of the boat which

struck a manatee. The exception to this is the very few cases where a responsible boater has reported a collision and researchers are able to compare the actual vessel to the observed injuries. In a few documented cases, manatees were obviously killed by a large vessel, the symptoms of which include massive crushing and or bifurcation (slicing into pieces) of the animal. The vast majority of cases involving watercraft-related mortality involve less dramatic injuries. Investigations comparing blade diameter and pitch indicate that the majority of manatees killed from watercraft-related collision are struck by smaller, fast-moving vessels.

As stated above, injuries to manatees from vessel impacts can be characterized as either lacerations or blunt trauma. Percentages generated by the mortality data-base indicate that 55 percent of the watercraft-related mortalities are the result of blunt trauma. Such trauma can result from impacts from vessel hulls, lower units, or other vessel components. Vessels without propellers (e.g., personal watercraft) still have the potential to ''take'' manatees.

*Comment 25:* Some commenters recommended that we consider factors such as water depth and the presence of aquatic vegetation when deciding the boundaries of manatee protection areas rather than base boundaries on unnatural features such as navigation channels or bank-to-bank designation of waterbodies.

*Response:* We considered such environmental features in evaluating potential manatee protection sites, because these factors influence manatee use of areas. There have been instances where habitat features (such as water depth) have been used to delineate boundaries of protection areas. The disadvantage of the use of such features for the purpose of this rule is the complexity and costs associated with such designs, and the potential for causing confusion among the regulated public resulting in poor compliance. Protection areas designed around environmental factors tend to be irregular and complex. This, in turn, results in significant increases in costs of implementation in terms of posting and the subsequent costs of maintenance. The limited resources available for this program required a less complex strategy for providing adequate protection for manatees and reasonable use of these areas by the public.

*Comment 26:* Some commenters recommended that we allow the challenge to the State rule for Brevard County to be adjudicated prior to taking action at the Barge Canal and Sykes Creek.

*Response:* Information regarding these sites indicates a clear need to establish protective measures to prevent, to the extent possible, take of manatees. The process of finalizing this rule is occurring simultaneously with the aforementioned challenge to the State rule. We concluded that we must move forward with designation of these sites at this time in order to ensure that appropriate protective measures are in place at these sites as soon as possible.

*Comment 27:* Some commenters noted that the Barge Canal and Sykes Creek provide ideal training sites for competitive rowers from around the Nation and the world, particularly during winter months. These waterbodies are ideally suited for training due to the fact that, regardless of wind direction, crews can find protected areas with flat water that prevents the rowing shells from being swamped. These commenters further noted that crews are accompanied by chase boats that carry the coaches, and that a primary function of these chase boats is to render aid to the crews in the event of an emergency. The chase boats are typically small john boats with 10 to 15 horsepower engines. The commenters stated that designating the Barge Canal and Sykes Creek as slow speed zones would deprive them of use of these waters as training facilities, and that no other suitable locales for such training are available in the area.

*Response:* We place a high priority on human safety. As such, we will allow chase boats operating in the Barge Canal and Sykes Creek manatee protection areas to travel in excess of ''slow speed'' for the purpose of safety during training of sculling/crewing athletes. The purpose of the chase boats is, in part, to render necessary assistance to persons or property, which is excepted under our existing regulations (50 CFR 17.105). Chase boats must remain in close proximity to rowing shells to provide safety equipment (such as personal flotation devices) and other needed assistance. Persons engaged in such activity must remain vigilant for manatees and must take appropriate action, including termination of training if necessary, to avoid take of manatees. These vessels will be required to comply with all posted speed zones when not actively engaged in training, including during transit to and from training areas.

**Required Determinations**

*Regulatory Planning and Review*

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic impact of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis is not required. We do not expect that any significant economic impacts would result from the establishment of 2 manatee refuges (1,528.5 acres) in Brevard County in the State of Florida. The public support for manatee protection is substantial in Florida. Using a contribution continuum method and reinforced by other empirical techniques, a study by Bendle and Bell in 1993 estimated that Floridians placed an asset value of $3.2 billion (2001 dollars) on the protection of the manatee population. This amounts to a per-household value of $18.12. The $3.2 billion is an estimate of the benefit derived by Floridians from the existence of the manatee population.

The purpose of this rule is to establish two additional manatee protection areas in Florida. We are proposing to reduce the level of take of manatees by controlling human activity in these two areas. Affected waterborne activities include the use of water vehicles. The two areas designated would be slow-speed zones. The economic effect of these designations will be measured by the number of watercraft users who use alternative sites for their activity or have a reduced quality of the waterborne activity experience at the designated sites. The State of Florida has 12,000 miles of rivers and streams and 3 million acres of lakes and ponds so the designation of 1,528 acres for lower speed operation is unlikely to prevent any waterborne activity because of this rule, although some individuals may need to modify slightly when, where, or how they pursue certain waterborne activities.

One watercraft manufacturer is known to use one of the designated sites as a boat testing area. While alternative sites without speed zones are available nearby that allow for continuation of boat testing, use of these sites would entail costs to the manufacturer due to additional travel time needed to conduct testing. This rule will affect the company's boat testing program. We are intending to propose amendments to our regulations (50 CFR 17.105) to allow for otherwise prohibited activities to

continue provided those engaging in such activities can demonstrate that the activities will not result in take of manatees.

For some watercraft users, the inconvenience and extra time required to cross a slow-speed zone will reduce the quality of the waterborne activity. The extra time required for commercial charter boats to reach fishing grounds will reduce on-site fishing time and could result in lower consumer surplus for the trip. The number of recreationists and charter boats using the designated sites is not known. The State of Florida has nearly 800,000 registered boats, but only those boats and recreationists using the designated sites will potentially be affected. However, since Florida has 12 thousand miles of rivers and streams and 3 million acres of lakes and ponds, only a small percentage of boat users will likely be affected by this rule. The current designation of these two protection areas will cause some inconvenience in travel time, but alternative sites within the proximity of the sites are available for all waterborne activities. Recreationists may be inconvenienced by having to travel to an undesignated area, but they are not prohibited from participating in any waterborne activity. Currently, no data sources estimate the amount of recreational activity in and around the two designated areas. For these reasons, we believe some inconvenience to the public may occur because of reduced travel speeds but that the economic impact will not be significant.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule is consistent with the approach used by State and local governments to protect manatees in Florida. We recognize the important role of State and local partners, and we continue to support and encourage State and local measures to improve manatee protection. We have focused the current action on those sites in which we have determined that Federal action can effectively address the needs in the particular area. If comparable protections are put in place in the future, we will consider removing those areas from Federal protection.

c. This final rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Minimal restrictions to existing human uses of the sites will result from this rule, and no entitlements, grants, user fees, loan programs or the rights and obligations of their recipients will be affected.

d. This rule will not raise novel legal or policy issues. We have previously established manatee protection areas.

*Regulatory Flexibility Act*

I certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

We conducted both public hearings and public notice and comment periods to determine the activities occurring in Barge Canal and Sykes Creek that might be affected by the creation of these manatee refuges. Based on the activities that we are aware of being conducted in these areas, and the fact that no activities will be prohibited although some may be inconvenienced by the need to proceed at slower speeds, we believe that this rule will not result in a significant economic dislocation.

To determine the potential effects of this rule on small entities, we looked at economic data from Brevard County. Table 1, below, depicts general economic characteristics, and Table 2 gives employment data. As can be seen in Table 1, the growth rate is slightly lower than the State average. Larger households account for the lower per capita income estimate. The proportion of total industry earnings coming from the amusements and recreation sector is 0.5 percent. The service sector is the largest economic contributor followed by retail trade and the real estate sectors. Overall, only a small proportion of earnings come from the amusement and recreation sector. As a result, a small impact to the recreation sector would not result in a significant effect on county-level income.

TABLE 1.—ECONOMIC CHARACTERISTICS OF THE SEVEN AFFECTED COUNTIES IN FLORIDA—1997

| Selected Florida Counties | Employment | Per capita personal income (Dollars) | 10 year rate of growth (Percent) | Personal Income ($000) | 10 year rate of growth (Percent) | Total industry earnings ($000) | Services industry earnings for amusements and recreation ($000) | Percent of total |
|---|---|---|---|---|---|---|---|---|
| Establishing Sanctuaries: | | | | | | | | |
| Citrus | 35,663 | $18,493 | 3.9 | $2,060,167 | 6.9 | $793,347 | $6,650 | 0.8 |
| Hillsborough | 644,694 | 23,719 | 5.2 | 21,558,783 | 6.6 | 18,847,236 | 67,676 | 1.4 |
| Pinellas | 506,946 | 28,367 | 4.9 | 24,770,929 | 5.5 | 13,876,518 | 114,826 | 0.8 |
| Establishing Refuges: | | | | | | | | |
| Brevard | 223,815 | 22,205 | 3.7 | 10,342,080 | 6.3 | 6,255,354 | 34,237 | 0.5 |
| Charlotte | 47,091 | 21,861 | 3.7 | 2,894,781 | 7.6 | 995,159 | 10,336 | 1.0 |
| Lee | 196,448 | 25,568 | 4.4 | 9,862,900 | 7.3 | 4,848,936 | 61,103 | 1.3 |
| Saralota | 169,984 | 35,654 | 5.2 | 10,706,931 | 6.8 | 4,239,034 | 114,742 | 2.7 |
| State of Florida | 8,032,538 | 24,799 | 4.5 | 363,979,647 | 6.6 | 220,985,959 | 4,255,304 | 1.9 |

**Source:** http://govinfo.library.orst.edu/cgi-bin/reis-list.

Table 2 provides employment data using Standard Industrial Classification (SIC) codes. The latest available published data pertained to 1997 for the total number of establishments in the SIC codes for fishing, hunting, trapping (SIC code 9), water transportation (SIC code 44), miscellaneous retail and services (SIC code 59), amusement and recreation services (SIC code 79), and nonclassifiable establishments. These are the establishments most likely to be directly associated with recreationists pursuing waterborne activities where manatees may be involved. As can be seen on Table 2, of the total number of establishments in these SIC codes, a large proportion employ fewer than 9 employees with the largest number of establishments employing fewer than 4 employees. If any economic impacts are associated with this rule, they will affect some proportion of these small entities.

TABLE 2.—EMPLOYMENT CHARACTERISTICS OF BREVARD COUNTY, FLORIDA—1997

[Includes sic codes 09, 44, 59, 79, services, and nec][1]

| | Mid-March employment | Total establish-ments | Number of establishments (1–4 employees) | Number of establishments (5–9 employees) | Number of establishments (10–19 employees) | Number of establishments (20 and over employees) |
|---|---|---|---|---|---|---|
| Brevard County ..... | 65,049 | 5,292 | 3,145 | 1,075 | 581 | 591 |

**Source:** http://fisher.lib.virginia.edu/cig-local/cbpbin/go.cgi.
[1] sic 09—Fishing, hunting, and trapping.
sic 44—water transportation.
sic 59—miscellaneous retail services division.
sic 79—amusement and recreation services nonclassifiable establishments division.

All of the acreage designated (1,528.5 acres) by this rule is for manatee refuges, which would only require a reduction in speed. We acknowledge that watercraft operating in barge canal will be required to go slower in designated areas and will required approximately 35 additional minutes to traverse the canal. We believe the additional time necessary will cause more than an insignificant economic effect. The additional time required may cause some recreationists to go to alternative sites, which may cause some loss of income to some small businesses. However, the additional time required is minimal and we believe that this will not be a significant economic dislocation.

The only known direct effect will be on a boat manufacturer which tests boats in the Barge Canal. Testing boats require the manufacturer to operate boats at speeds of up to 35 mph, and the costs of relocating the test site have not been specifically estimated. However, based on information provided by the company, designation of the Barge Canal as a manatee protection area may have a more than minimal impact on the boat testing operations of this business. Substitute sites are available within a reasonable distance; however, the costs of operating at these sites will be substantially greater than the costs of using the current test site in the Barge Canal.

As mentioned above, we intend to propose amendments to our regulations (50 CFR 17.105) to incorporate a process by which we may evaluate and authorize specific activities within designated manatee protection areas, provided parties requesting such authorization can demonstrate that their activities will not cause the take of manatees. If the manufacturer is able to meet this standard, we anticipate that this rule will result in at most a temporary impact on their boat testing program.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

a. Does not have an annual effect on the economy of $100 million or more. As shown above, this final rule may cause some inconvenience to recreationists because of the speed restriction on manatee refuge areas, but this should not translate into any significant business reductions for the many small businesses in the seven potentially affected counties, aside from the above-mentioned boat manufacturer. An unknown portion of the establishments shown on Table 2 could be affected by this rule. Because the restrictions on recreational activity are believed to be no more than an inconvenience for recreationists, we believe that any economic effect on small entities resulting from changes in recreational use patterns will be insignificant also.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Aside from the above-mentioned effects of this rule on the testing of boats in the Barge Canal, which have not been specifically quantified and which are anticipated to be temporary, unforeseen changes in costs or prices for consumers stemming from this rule are unlikely. The charter boat industry may be affected by lower speed limits for some areas when traveling to and from fishing grounds. No specific information regarding potential costs to the charter boat industry was provided during the rulemaking process. We do not believe that reduced speed limits will result in a significant economic effect.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As stated above, this rule may generate some level of inconvenience to recreationists because of speed limits, and a temporary interruption in the testing of boats in the Barge Canal, but these effects are believed to be minor and will not interfere with the normal operation of other businesses in the affected counties. The added travel time to traverse some areas is not expected to be a major factor that will impact business activity.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The designation of manatee refuges and sanctuaries imposes no new obligations on State or local governments.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. As such, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

*Takings*

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. The final manatee protection areas are located over State-owned submerged bottoms. Any property owners in the vicinity will have navigational access to their property.

*Federalism*

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. As discussed earlier, we coordinated with the State of Florida to the extent possible on the development of this rule.

*Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Paperwork Reduction Act*

This regulation does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The final regulation will not impose new record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

*National Environmental Policy Act*

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment has been prepared and is available for review upon request by writing to the Jacksonville Field Office (*see* **ADDRESSES** section).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175 and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

*Energy Supply, Distribution or Use (Executive Order 13211)*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is not a significant regulatory action under Executive Order 12866 and it only requires vessels to proceed at slow speed along two small segments (600.6 ha or 1528.5 acres) of waterways in Florida, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

*References Cited*

A complete list of all references cited in this final rule is available upon request from the Jacksonville Field Office (*see* **ADDRESSES** section).

*Author*

The primary author of this document is Cameron Shaw (*see* **ADDRESSES** section).

*Authority*

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub.L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.102, remove the definition for ''water vehicle'' and add definitions, in the alphabetical order, as follows:

**§ 17.102 Definitions.**

* * * * *

*Idle speed* is defined as the minimum speed needed to maintain steerage (direction) of the vessel.

* * * * *

*Planing* means riding on or near the water's surface as a result of the hydrodynamic forces on a water vehicle's hull, sponsons, foils, or other surfaces. A water vehicle is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

*Slow speed* is defined as the speed at which a water vehicle proceeds when it is fully off plane and completely settled in the water. Due to the different speeds at which water vehicles of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A water vehicle is *not* proceeding at slow speed if it is: on a plane; in the process of coming up on or coming off of plane; or creating an excessive wake. A water vehicle *is* proceeding at slow speed if it is fully off plane and completely settled in the water, not creating an excessive wake.

*Slow speed (channel exempt)* means that the slow-speed designation does not apply to those waters within the maintained, marked channel.

*Slow speed (channel included)* means that the slow-speed designation applies both within and outside the designated channel.

*Wake* means all changes in the vertical height of the water's surface caused by the passage of a water vehicle, including a vessel's bow wave, stern wave, and propeller wash, or a combination thereof.

* * * * *

*Water vehicle, watercraft,* and *vessel* include, but are not limited to, boats (whether powered by engine, wind, or other means), ships (whether powered by engine, wind, or other means), barges, surfboards, personal watercraft, water skis, or any other device or mechanism the primary or an incidental purpose of which is locomotion on, or across, or underneath the surface of the water.

3. Amend § 17.108 as follows:

a. Remove the note following paragraph (b) and;

b. Add paragraph (c) as set forth below.

**§ 17.108 List of designated manatee protection areas.**

* * * * *

(c) *Manatee refuges.* The following areas are designated as manatee refuges. For each manatee refuge, we will state on appropriate signs which, if any, waterborne activities are prohibited, and state the applicable restrictions, if any, on permitted waterborne activities. The areas that will be posted are described as follows:

(1) The Barge Canal Manatee Protection Area

(i) The Barge Canal Manatee Protection Area is described as all waters lying within the banks of the Barge Canal, Brevard County, including all waters lying within the marked channel in the Banana River that lie between the east entrance of the Barge Canal and the Canaveral Locks; containing approximately 276.3 ha (682.7 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) all year. The use of watercraft at speeds greater than slow speed is prohibited throughout the Barge Canal Manatee Protection Area.

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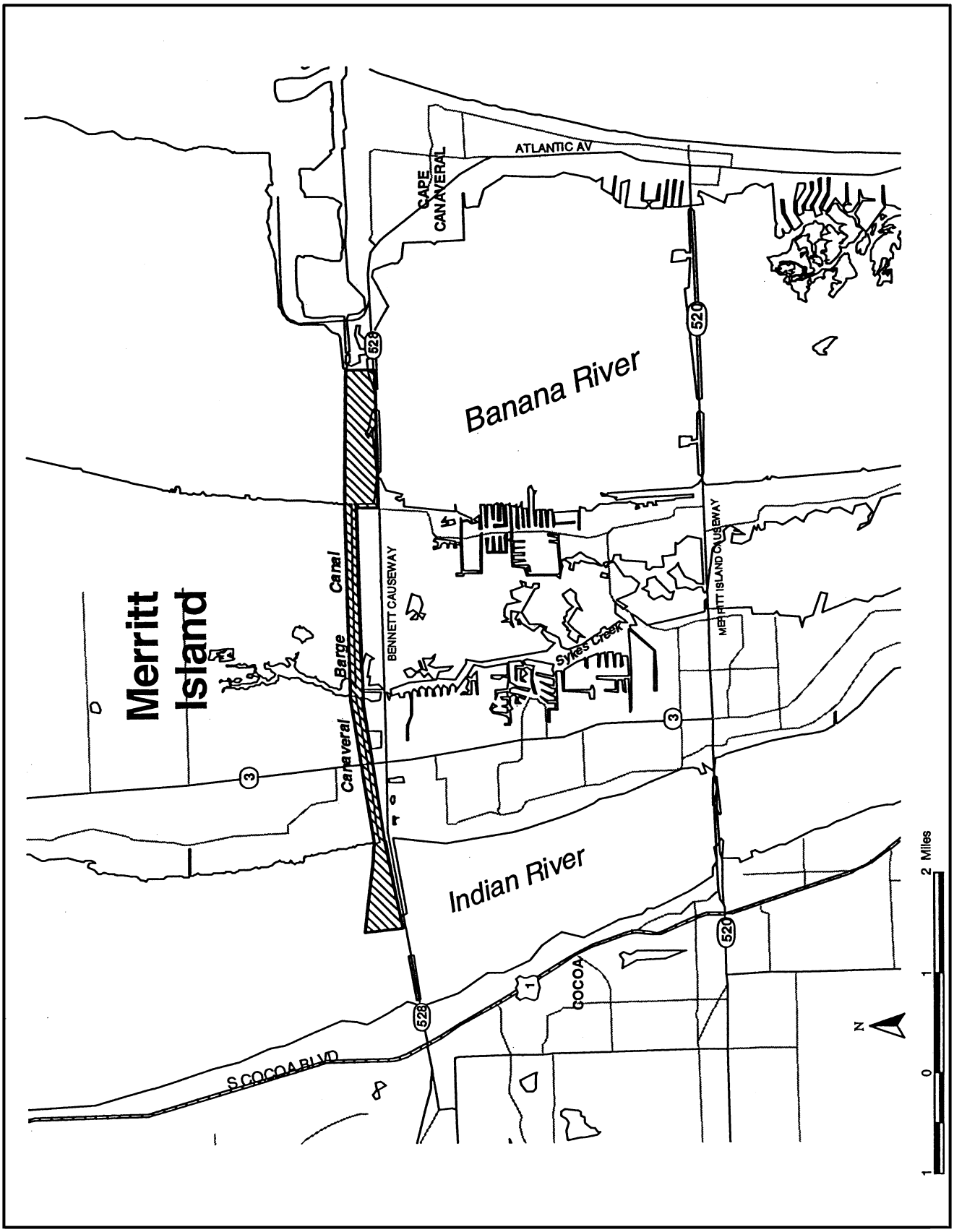


**Figure 1. Barge Canal Manatee Refuge**

(2) The Sykes Creek Manatee Protection Area.

(i) The Sykes Creek Manatee Protection Area is described as all waters, including the marked channel in Sykes Creek, Brevard County. In particular, the portion of Sykes Creek southerly of the southern boundary of that portion of the creek commonly known as the ''S'' curve (said boundary being a line bearing East from a point on the western shoreline of Sykes Creek at approximate latitude 28 degrees 23′24″ N, approximate longitude 80 degrees 41′27″ W) and northerly of the Sykes Creek Parkway; containing approximately 342.3 ha (845.8 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) all year. The use of watercraft at speeds greater than slow speed is prohibited throughout the Sykes Creek Manatee Protection Area.

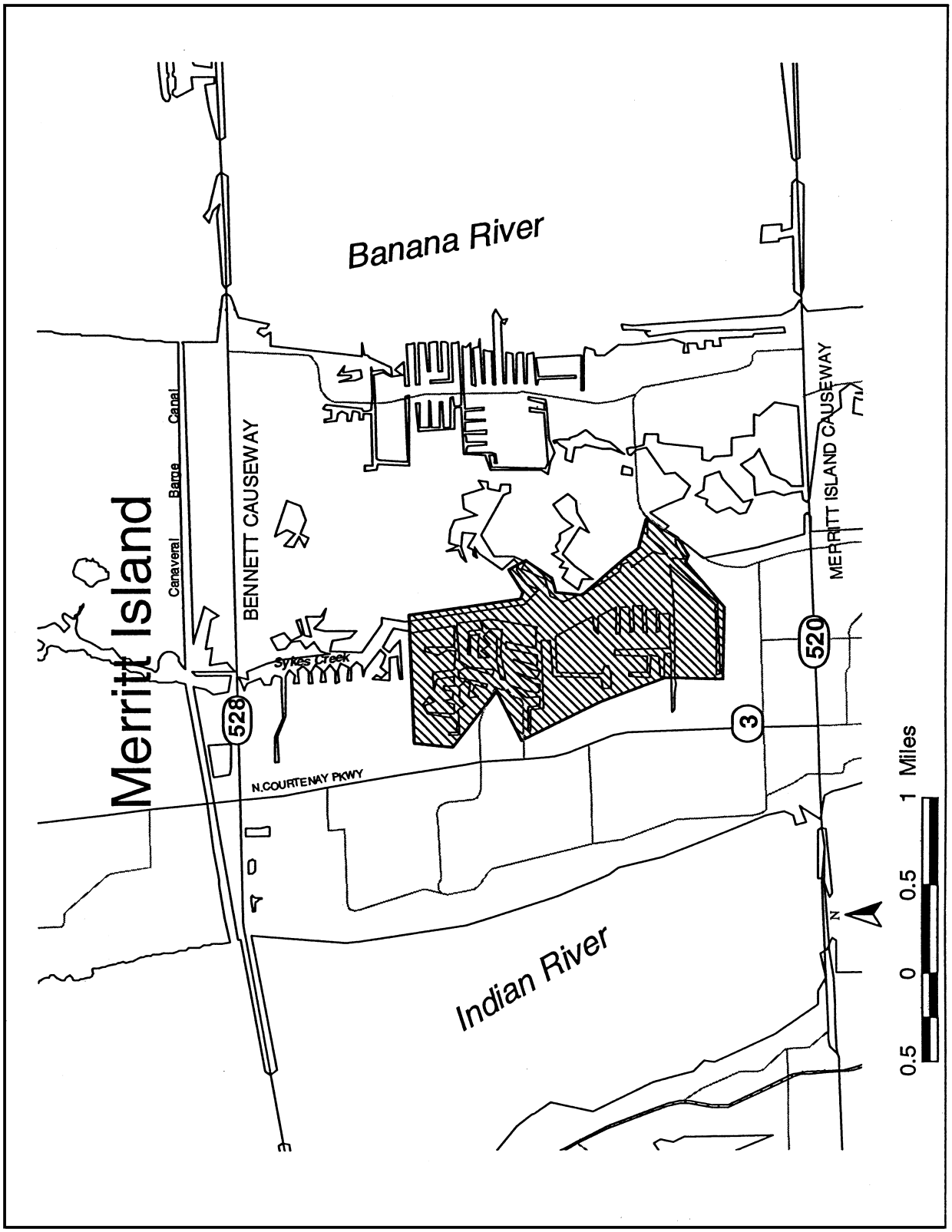


**Figure 2. Sykes Creek Manatee Refuge**

Dated: December 28, 2001.

**Marshall P. Jones, Jr.,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 02–265 Filed 1–4–02; 8:45 am]

**BILLING CODE 4310–55–C**

# Rules and Regulations

Federal Register
Vol. 67, No. 4
Monday, January 7, 2002

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

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 93

**[Docket No. 01–055–2]**

### States Approved To Receive Stallions and Mares From CEM-Affected Regions; Rhode Island

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

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** On November 1, 2001, the Animal and Plant Health Inspection Service published a direct final rule. (See 66 FR 55068–55071, Docket No. 01–055–1.) The direct final rule notified the public of our intention to amend the animal importation regulations by adding Rhode Island to the list of States approved to receive certain stallions and mares imported into the United States from regions affected with contagious equine metritis (CEM). We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

**EFFECTIVE DATE:** The effective date of the direct final rule is confirmed as December 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Dr. Barbara Bischoff, Staff Veterinarian, National Center for Import and Export, Technical Trade Services, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 26th day of December 2001.

**W. Ron DeHaven,**

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

[FR Doc. 02–264 Filed 1–4–02; 8:45 am]

**BILLING CODE 3410–34–U**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 94

**[Docket No. 01–010–2]**

### Change in Disease Status of Japan With Regard to Foot-and-Mouth Disease

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations governing the importation of certain animals, meat, and other animal products by adding Japan to the list of regions that are considered free of rinderpest and foot-and-mouth disease. We are taking this action because we have determined that Japan is now free of foot-and-mouth disease. We are also adding Japan to the list of regions that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or foot-and-mouth disease-affected countries. These actions update the disease status of Japan with regard to foot-and-mouth disease while continuing to protect the United States from an introduction of rinderpest and foot-and-mouth disease by providing additional requirements for meat and meat products imported into the United States from Japan.

**EFFECTIVE DATE:** January 7, 2002.

**FOR FURTHER INFORMATION CONTACT:** Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–3276.

**SUPPLEMENTARY INFORMATION:**

#### Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are declared free of rinderpest or free of both rinderpest and FMD. Rinderpest or FMD is considered to exist in all other parts of the world not listed. Section 94.11 of the regulations lists regions of the world that have been determined to be free of rinderpest and FMD, but that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions.

In an interim rule effective on March 8, 2000, and affirmed on July 14, 2000, we amended the regulations in § 94.1(a)(2) by removing Japan from the list of regions that have been declared free of rinderpest and FMD. This action was necessary because FMD had been confirmed in Japan. (Although Japan continues to be free of rinderpest, § 94.1(a)(2) lists regions that are declared free of both rinderpest and FMD.) Additionally, in that interim rule, we removed Japan from the list in § 94.11 of countries that are declared to be free of these diseases, but that are still subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. As a result of that action, the importation into the United States of any ruminant or swine or any fresh (chilled or frozen) meat of any ruminant or swine that left Japan on or after March 8, 2000, was prohibited or restricted.

In response to the March 2000 outbreak of FMD, Japan undertook intensive efforts to eradicate the disease. Japan's last FMD-affected premises was depopulated on May 15, 2000.

On September 4, 2001, we published in the **Federal Register** (66 FR 46228–46230, Docket No. 01–010–1) a proposal to amend the regulations by adding Japan to the list in § 94.1(a) of regions that are considered free of rinderpest and FMD. In that document, we also proposed to add Japan to the list in § 94.11(a) of regions declared free of rinderpest and FMD but that are subject to special restrictions on the importation of their meat and other animal products into the United States.

We solicited comments concerning our proposal for 60 days ending November 5, 2001. We received one comment by that date, from an organization representing American cattle producers. The commenter opposed the designation of Japan as free of FMD, arguing that insufficient time had passed since Japan's most recent reported case of FMD in May 2000 for the U.S. Department of Agriculture (USDA) to confirm eradication of the disease. The commenter recommended a 4- to 5-year disease-free waiting period from the time of the most recent recorded case of FMD to the designation of a country as FMD-free, during which time the importation into the United States of any animals, cut products, and byproducts from that country would be banned. Noting that the FMD virus can persist in the oropharynx of cattle for up to 30 months and can be preserved by refrigeration or freezing, the commenter argued that the 4- to 5-year time frame would provide a reasonable period within which the risk of FMD re-infection would be sufficiently diminished. The commenter also discussed the need for a comprehensive on-site review of the health of the livestock herds in the infected country by qualified U.S. animal health experts.

We continue to believe that designation of Japan as FMD-free is justified. International disease standards set by the Office International des Epizooties allow a country that was previously free of FMD but that subsequently suffered an occurrence to regain its FMD-free status 3 months after the last recorded case. Japan depopulated its last FMD-affected premises on May 15, 2000. While the virus can persist, surveillance conducted by Japanese authorities, which included serological testing and clinical assessment, did not reveal any carrier animals. In addition, the USDA did conduct an on-site visit to Japan in January 2001 and concluded that the depopulation and surveillance measures taken by Japanese authorities have ensured the eradication of FMD in Japan.

The commenter also stated that an outbreak of either FMD or bovine spongiform encephalopathy (BSE) in a country should be grounds to preclude disease-free certification for both of these diseases. According to the commenter, outbreaks of either of these diseases indicate a failure on the part of the affected country to take adequate precautionary measures to protect the health of its livestock. Therefore, the commenter contended that the confirmation of BSE in Japan on September 22, 2001, should preclude recognition of that country as FMD-free.

We are making no changes based on this comment. When a country first applies to the Animal and Plant Health Inspection Service (APHIS) to be recognized as free of a specific disease of concern, APHIS conducts an evaluation and considers a number of factors affecting the reliability of that country's animal disease prevention efforts. The factors considered include, but are not limited to, the disease history of the country; the authority, organization, and infrastructure of the veterinary services programs in the country; the extent to which movement of animals and animal products is controlled from regions of higher disease risk; the type and extent of disease surveillance in the country; and the policies and infrastructure for animal disease control in the country i.e., emergency response.

APHIS will recognize a country free of a specific disease only after it has determined that the factors listed above indicate an acceptable level of animal biosecurity in that country. As standard procedure, this determination is made only after APHIS representatives have conducted a site visit of the country in question. Based on the factors listed above, APHIS has determined that it is appropriate to consider Japan free of FMD.

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

**Effective Date**

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule restores Japan to the list of regions considered free of FMD. Immediate action is necessary to remove restrictions on the importation of animals, meat, and other animal products that are no longer necessary. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the regulations to add Japan to the list of regions that are considered free of rinderpest and FMD. We are taking this action because we have determined that Japan is now free of FMD. We are also adding Japan to the list of regions that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected countries. These actions update the disease status of Japan with regard to FMD while continuing to protect the United States from an introduction of rinderpest and FMD by providing additional requirements for any meat and meat products imported into the United States from Japan.

The following analysis addresses the economic effect of this rule on small entities, as required by the Regulatory Flexibility Act.

The livestock industry plays a significant role in the U.S. economy. According to the National Agricultural Statistics Service, in 2000, the total number of cattle and calves in the United States was approximately 98.05 million, valued at approximately $67.01 billion. U.S. operations with cattle numbered 1,115,650 in 1997, the last year for which census data are available. More than 99 percent of these cattle operations had gross receipts of less than $750,000, which qualifies them as small entities according to the standards set by the Small Business Administration.

The U.S. livestock industry also plays an important role in international trade. U.S. competitiveness in international markets relies significantly upon this country's reputation for producing high-quality, disease-free animals and animal products. Maintaining these favorable trade conditions depends, in part, on continued aggressive efforts to prevent any threat of FMD introduction into the United States. A single outbreak of FMD anywhere in the United States would close our major export markets for livestock and livestock products overnight. Most exports of meat, animals, and animal byproducts would be stopped until the disease was completely eradicated.

In 1999, the total earnings from U.S. exports of live cattle, swine, beef and veal, pork, and dairy products to the rest of the world were approximately $4.80 billion. Additionally, the export of other animals and animal products and byproducts generated approximately $5.64 billion in sales for the United States. Consequently, an outbreak of FMD could result in the potential loss of export sales in the billions of dollars as well as other costs to those involved in the U.S. livestock industry.

Because we are declaring Japan to be free of FMD but subject to the restrictions of § 94.11 due to its trading

relationships with rinderpest- or FMD-affected regions, this rule will produce economic benefits by continuing to protect against the introduction of rinderpest and FMD into the United States. Import values of dairy products, red meat, and red meat products represented less than 0.01 percent of the overall value of U.S. imports from Japan in 1999. Since Japan is not a significant source, and is not expected to become a significant source, of these products for the U.S. market, this rule will not have a noticeable effect on producer, wholesale, or consumer prices in the United States. Therefore, we expect that there will be very little or no effect on U.S. entities, large or small, as a result of this rule.

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

**Executive Order 12988**

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

**Paperwork Reduction Act**

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

**List of Subjects in 9 CFR Part 94**

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

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

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

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

**Authority:** 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

**§ 94.1 [Amended]**

2. In § 94.1, paragraph (a)(2) is amended by adding, in alphabetical order, the word ''Japan,''.

**§ 94.11 [Amended]**

3. In § 94.11, paragraph (a), the first sentence is amended by adding, in alphabetical order, the word ''Japan,''.

Done in Washington, DC, this 27th day of December, 2001.

**W. Ron DeHaven,**

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

[FR Doc. 02–262 Filed 1–4–02; 8:45 am]

BILLING CODE 3410–34–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–124–AD; Amendment 39–12578; AD 2001–26–12]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747–100, 747–200, 747–300, and 747SR Series Airplanes Powered by General Electric CF6–45/50 or Pratt & Whitney JT9D–70 Series Engines

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747–100, 747–200, 747–300, and 747SR series airplanes powered by General Electric CF6–45/50 or Pratt & Whitney JT9D–70 series engines, that currently requires a detailed visual inspection of the outboard diagonal brace for heat damage and cracking; and follow-on repetitive inspections and corrective actions, if necessary. This amendment requires accomplishment of the previously optional replacement of any existing sealant with heat-resistant sealant as terminating action for the repetitive inspections required by this AD. This amendment is prompted by reports of heat damage to the forward end of the diagonal brace after accomplishment of a previous strut and wing modification. The actions specified by this AD are intended to prevent heat damage to the diagonal brace, which could cause cracking, fracture, and possible loss of the diagonal brace load path and consequent separation of the strut and engine from the airplane.

**DATES:** Effective February 11, 2002.

The incorporation by reference of Boeing Alert Service Bulletin 747–54A2208, dated March 29, 2001, was approved previously by the Director of the Federal Register as of June 27, 2001 (66 FR 31527, June 12, 2001).

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–12–05, amendment 39–12260 (66 FR 31527, June 12, 2001), which is applicable to certain Boeing Model 747–100, 747–200, 747–300, and 747SR series airplanes powered by General Electric CF6–45/50 or Pratt & Whitney JT9D–70 series engines, was published in the **Federal Register** on September 4, 2001 (66 FR 46241). The action proposed to continue to require a detailed visual inspection of the outboard diagonal brace for heat damage and cracking; and follow-on repetitive inspections and corrective actions, if necessary. The action also proposed to require accomplishment of the previously optional terminating replacement of any existing sealant with heat-resistant sealant as terminating action for the repetitive inspections.

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

**Change to Final Rule**

Since the issuance of the proposal, the FAA has approved two alternative methods of compliance for AD 2001–12–05. A new paragraph (d)(2) has been added to this final rule to include those approvals.

**Conclusion**

After careful review of the available data, the FAA has determined that air

safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

**Cost Impact**

There are approximately 145 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 39 airplanes of U.S. registry will be affected by this AD.

The repetitive inspections that are currently required by AD 2001–12–05 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $2,340 per airplane, per inspection cycle.

The terminating action that is required by this AD action will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $100 per airplane. Based on these figures, the cost impact of the requirements of this AD is estimated to be $8,580, or $220 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–12260 (66 FR 31527, June 12, 2001), and by adding a new airworthiness directive (AD), amendment 39–12578, to read as follows:

**2001–26–12 Boeing:** Amendment 39–12578. Docket 2001–NM–124–AD. Supersedes AD 2001–12–05, Amendment 39–12260.

*Applicability:* Model 747–100, 747–200, 747–300, and 747SR series airplanes; certificated in any category; powered by General Electric CF6–45/50 series engines, or Pratt & Whitney JT9D–70 series engines.

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

*Compliance:* Required as indicated, unless accomplished previously.

To prevent heat damage to the diagonal brace, which could cause cracking or fracture of the diagonal brace, and possible loss of the diagonal brace load path and consequent separation of the strut and engine from the airplane, accomplish the following:

**Restatement of Certain Requirements of AD 2000–12–05:**

*Verification*

(a) Within 90 days after June 27, 2001 (the effective date of AD 2001–12–05, amendment 39–12260), do the actions required by paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) If an operator's maintenance records verify that, during the accomplishment of AD 95–13–07, amendment 39–9287, the seal backup plates were restored and BMS 5–63 high-temperature sealant was used in that restoration, no further action is required by this AD.

(2) If an operator's maintenance records do not verify that the actions specified in paragraph (a)(1) of this AD were accomplished, do the actions required by paragraph (b) of this AD.

*Inspections and Corrective Actions*

(b) Within 90 days after June 27, 2001, do the inspections and applicable corrective actions specified by paragraphs (b)(1) and (b)(2) of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2208, dated March 29, 2001. Thereafter, repeat the inspections at intervals not to exceed 6 months, until accomplishment of paragraph (c) of this AD.

*Outboard Strut Diagonal Brace*

(1) Do a detailed visual inspection of the forward 20 inches of the outboard strut diagonal brace, including all areas of the forward clevis lugs and brace body, for signs of heat damage or cracks, per Part 1 of the Accomplishment Instructions of the service bulletin.

(i) If no sign of heat damage or cracking is found, repeat the detailed visual inspection at intervals not to exceed 6 months, per the service bulletin, until accomplishment of paragraph (c) of this AD.

(ii) If any primer discoloration is found, before further flight, do a non-destructive test (NDT) inspection of the area to determine if the diagonal brace has heat damage per Part 1 of the Accomplishment Instructions of the service bulletin.

(A) If no heat damage is found during the NDT inspection, and no cracking is found during the detailed visual inspection, repeat the detailed visual inspection specified by paragraph (b)(1) of this AD at intervals not to exceed 6 months.

(B) If any heat damage is found during the NDT inspection, or any cracking is found during the detailed visual inspection, before further flight, do the actions specified in paragraph (c)(2) of this AD. Thereafter, repeat the detailed visual inspection specified by paragraph (b)(1) of this AD at intervals not to exceed 6 months.

*Firewall Openings of the Strut Aft Bulkhead*

(2) Do a detailed visual inspection of the firewall openings of the strut aft bulkhead to verify installation of seal backup plates and condition of the sealant application per Part 1 of the Accomplishment Instructions of the service bulletin.

(i) If no discrepancy (including damaged or missing seal backup plates, or damaged or missing sealant) is found, repeat the detailed

visual inspection specified by paragraph (b)(1) of this AD at intervals not to exceed 6 months.

(ii) If the seal backup plates are not installed, before further flight, install the seal backup plates and apply heat-resistant sealant, BMS 5–63, per Part 2 of the Accomplishment Instructions of the service bulletin. Accomplishment of this action terminates the repetitive inspections required by this AD.

(iii) If the seal backup plates are installed, but the sealant application is damaged or missing, before further flight, remove any existing sealant and apply heat-resistant sealant, BMS 5–63, per Part 3 of the Accomplishment Instructions of the service bulletin. Accomplishment of this action terminates the repetitive inspections required by this AD.

**Note 2:** Because it is difficult to distinguish between BMS 5–95 and BMS 5–63 sealants, removal and replacement of the existing sealant is required to ensure that the correct heat-resistant sealant, BMS 5–63, is used.

**New Requirements of This AD**

*Terminating Action and Corrective Action*

(c) Within 18 months after the effective date of this AD: Do the action specified by paragraph (c)(1), (c)(2), or (c)(3) of this AD, as applicable. Accomplishment of the applicable action constitutes terminating action for the repetitive inspections required by this AD.

(1) Following the inspections required by paragraphs (b)(1) and (b)(2) of this AD, if no cracking or heat damage is found during those inspections, and the seal backup plates are installed, before further flight, remove any existing sealant and apply heat-resistant sealant BMS 5–63, per Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2208, dated March 29, 2001.

(2) If any sign of heat damage or cracking is found during the inspections required by paragraph (b) of this AD, before further flight, do the actions specified by either paragraph (c)(2)(i) or (c)(2)(ii) of this AD.

(i) Replace the diagonal brace per Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2208, dated March 29, 2001.

(ii) Repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(3) If the seal back-up plates are not installed, before further flight, install the seal backup plates and apply heat-resistant sealant BMS 5–63, per Part 2 of the Accomplishment Instructions of the service bulletin.

*Alternative Methods of Compliance*

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2001–12–05, amendment 39–12260, are approved as alternative methods of compliance with this AD.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

*Special Flight Permits*

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

*Incorporation by Reference*

(f) Except as provided by paragraphs (a) and (c)(2)(ii) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–54A2208, dated March 29, 2001. The incorporation by reference of Boeing Alert Service Bulletin 747–54A2208, dated March 29, 2001, was approved previously by the Director of the Federal Register as of June 27, 2001 (66 FR 31527, June 12, 2001). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

*Effective Date*

(g) This amendment becomes effective on February 11, 2002.

Issued in Renton, Washington, on December 20, 2001.

**Ali Bahrami,**

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

[FR Doc. 02–87 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NE–41–AD; Amendment 39–12593; AD 2002–01–02]**

**RIN 2120–AA64**

## Airworthiness Directives; Turbomeca S.A. Arrius 1A Turboshaft Engines

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to Turbomeca S.A. Arrius 1A turboshaft engines. This action requires replacement of the 10 main fuel injectors in Arrius 1A engines with new or overhauled injectors. This amendment is prompted by routine inspections conducted in the repair workshop demonstrating that some main fuel injectors were partially or totally blocked. The actions specified in this AD are intended to prevent blocked main fuel injectors that could lead to engine flameout during engine deceleration or that could prevent the engine from obtaining the 2½ minute one engine inoperative (OEI) power.

**DATES:** Effective January 22, 2002.

Comments for inclusion in the Rules Docket must be received on or before March 8, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–41–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 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.

**FOR FURTHER INFORMATION CONTACT:** Robert P. McCabe, Aerospace Engineer, Boston Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA, 01803; telephone (781) 238–7138; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Turbomeca S.A. Arrius 1A turboshaft engines. The DGAC advises that during routine inspections in the repair workshop some main fuel injectors were discovered to be totally or partially blocked, and that this condition could cause flameouts during engine decelerations and OEI power shortfall occurrences.

**Manufacturer's Service Information**

Turbomeca S.A. (Group Snecma) has issued Alert Service Bulletin (ASB) No. A319 73 0071, dated January 1, 2001, that requires replacement of the 10 main fuel injectors in Arrius 1A engines with new or overhauled injectors. The DGAC classified this service bulletin as

mandatory and issued AD 2000–532(A) in order to assure the airworthiness of these Turbomeca S.A. Arrius 1A turboshaft engines in France.

**Bilateral Airworthiness Agreement**

This engine model is manufactured in France 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 DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

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

Since an unsafe condition has been identified that is likely to exist or develop on other Turbomeca S.A. Arrius 1A engines of the same type design, this AD is being issued to prevent blocked main fuel injectors that could lead to engine flameout during engine deceleration or that could prevent the engine from obtaining the 2½ minute OEI (maximum emergency) power. This AD requires replacement of the 10 main fuel injectors in Arrius 1A engines with new or overhauled injectors. Fuel injectors that have accumulated more than 1,350 hours of operation since new or last overhaul must be replaced before further flight. The actions are required to be done in accordance with the service bulletin described previously.

**Immediate Adoption of This AD**

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

**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 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 2001–NE–41–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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

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

Air transportation, Aircraft, Aviation safety, 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 adding the following new airworthiness directive:

**2002–01–02 Turbomeca S.A.:** Amendment 39–12593. Docket 2001–NE–41–AD.

**Applicability**

This airworthiness directive (AD) is applicable to Turbomeca S.A. Arrius 1A turboshaft engines installed on, but not limited to Eurocopter helicopters: Model AS355N, called the Ecureuil/Twinstar; and Model AS555UN, called the Fennic.

**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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance**

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

To prevent blocked main fuel injectors that could lead to engine flameout during engine deceleration or that could prevent the engine from obtaining the 2-½ minute one engine inoperative (OEI) power, replace the 10 main fuel injectors in Arrius 1A engines with new or overhauled injectors using the following schedule:

Replacement Schedule

(a) Before further flight, replace any fuel injector that has accumulated more than 1,350 hours of operation since new or last overhaul.

(b) Fuel injectors that have accumulated less than 1,350 hours of operation since new or last overhaul must be replaced prior to achieving 1,350 hours of operation.

**Service Documents for Reference**

(c) Turbomeca S.A. (Group Snecma) Alert Service Bulletin (ASB) No. A319 73 0071, dated January 1, 2001, contains additional information concerning the replacement of these injectors.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston 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, Boston ECO.

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

**Special Flight Permits Prohibited**

(e) Special flight permits are prohibited because fuel injector operation in excess of 1,350 hours is prohibited. However, operators can easily replace the fuel injectors at any location using standard maintenance tools.

**Note 3:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile (DGAC) airworthiness directive AD Number 2000–532(A), dated December 27, 2000.

**Effective Date**

(f) This amendment becomes effective on January 22, 2002.

Issued in Burlington, Massachusetts, on December 28, 2001.

**Robert J. Ganley,**

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

[FR Doc. 02–199 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Parts 107 and 108

**[Docket No. FAA–2001–10999; Amdt. Nos. 107–14 and 108–19]**

**RIN 2120–AH53**

## Criminal History Records Checks

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

**ACTION:** Final rule with request for comments; extension of comment period.

**SUMMARY:** On December 6, 2001, the FAA published a final rule with request for comments regarding criminal history records checks and invited comments. The comment period was originally scheduled to close on January 7, 2002; however, the FAA is extending the comment period an additional 10 days in response to a request from the Air Transport Association (ATA) and the Regional Airline Association (RAA).

**DATES:** Comments must be received on or before January 17, 2002.

**ADDRESSES:** Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW, Washington, DC 20590. You must identify the docket number FAA–2001–10999 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard. You may also submit comments through the Internet to *http://dms.dot.gov*.

You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 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 above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Linda Valencia, Office of Civil Aviation Security Policy and Planning, Civil Aviation Security Division (ACP–100), Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone 202–267–3413.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The final rule was adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; Feb. 26, 1979), however provides that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons were, and are, invited to participate in this rulemaking by submitting written data, views, or arguments. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment also are invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late-filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

See **ADDRESSES** above for information on how to submit comments.

### Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last five digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/armhome.htm* or the Office of the Federal Register's web page at *http://www.access.gpo.gov/su__docs/aces/aces140html*.

You can also get a 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. Be sure to identify the amendment number or docket number of this final rule.

### Extension of Comment Period

On December 6, 2001, the FAA published a final rule with request for comments entitled ''Criminal History Records Checks'' (66 FR 63474). The FAA requested that comments be submitted by January 7, 2002. By letter dated December 21, 2001, the Air Transport Association (ATA) and the Regional Airline Association (RAA) requested that the FAA extend the comment period for 10 days. The ATA and RAA stated that the rule raised practical and legal issues requiring resolution. They also stated that more time is needed for them to develop their recommendations and circulate them among their members before submitting them to the FAA.

The FAA determines that extending the comment period is in the public interest. Accordingly, the comment period for the final rule ''Criminal Records Checks'' is extended until January 17, 2002.

Issued in Washington, DC, on January 2, 2002.

**Anthony F. Fazio,**

*Director, Office of Rulemaking.*

[FR Doc. 02–358 Filed 1–2–02; 4:38 pm]

BILLING CODE 4910–13–P

## NATIONAL LABOR RELATIONS BOARD

### 29 CFR Part 102

### Revisions of Regulations Governing Stipulated Records Filed With the Board or With the Board's Administrative Law Judges

**AGENCY:** National Labor Relations Board.

**ACTION:** Final rule.

**SUMMARY:** The National Labor Relations Board is amending its regulations governing stipulated record cases to delete an outdated procedure for filing stipulated records with its Administrative Law Judges and to substitute an alternative procedure governing stipulated record cases filed either with the Board or with an Administrative Law Judge.

**DATES:** Effective: January 7, 2002.

**FOR FURTHER INFORMATION CONTACT:** John J. Toner, Executive Secretary, (202) 273–1936.

**SUPPLEMENTARY INFORMATION:** Section 102.35(a)(9) of the National Labor Relations Board's rules provides for a limited form of stipulation before Administrative Law Judges in which, following a hearing, transcripts are dispensed with and exceptions to findings of fact are waived. 29 CFR 102.35(a)(9). This provision was adopted several decades ago. It is never used today and was not used much at the time it was adopted. For this reason, the Board has decided to eliminate this procedure from its rules.

The Board has, on occasion, permitted parties to file stipulated records directly with it along with requests that the stipulated cases be decided without an evidentiary hearing. Typically these are cases in which the facts are not in dispute and the parties wish expedited consideration of what they perceive to be purely legal issues. Because this practice has never been memorialized in the Board's rules, the Board is adding it now. The same practice will also be made available in proceedings before Administrative Law Judges.

In describing the procedures for submitting a stipulation of facts, the rule states that a statement of the issues presented should be set forth in the stipulation and that each party should also submit a short statement (no more than three pages) of its position on the issues. The Board's experience with stipulations of facts has been that, while the parties know the contested issues and their positions on those issues, a mere stipulation of facts by itself may not be sufficient to convey that important information to the Board. Including a statement of issues in the stipulation of facts and submitting a short statement of each party's position on those issues will assist the Board in determining whether it wishes to decide a case without the benefit of a full hearing and a judge's decision.

For these reasons, the Board has decided to eliminate the former Section 102.35(a)(9) and subtitute for it a brief statement outlining the procedures for submitting stipulated records to it or to its Administrative Law Judges.

**Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these rules will not have a significant economic impact on a substantial number of small business entities as they merely permit parties to a Board proceeding to submit requests to have cases decided on a stipulated record.

**Executive Order 12866**

The regulatory review provisions of Executive Order 12866 do not apply to independent regulatory agencies. However, even if they did, the proposed changes in the Board's rules would not be classified as ''significant rules''' under Section 6 of Executive Order 12866, because they will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**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; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based companies to compete with foreign-based companies in domestic and export markets.

**Paperwork Reduction Act**

This part does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

**List of Subjects in 29 CFR Part 102**

Administrative practice and procedure, Labor management relations.

For the reasons set forth in the preamble, the National Labor Relations Board is amending 29 CFR Chapter I, Part 102, as follows:

## PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for part 102 continues to read as follows:

**Authority:** Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117 also issued under sec. 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)), and section 442a(j) and (k) of the Privacy Act (5 U.S.C. 55a(j) and (k)). Sections 102.143 through 102.155 also issued under sec. 504(c)(1) of the Equal Access to Justice Act as amended (5 U.S.C. 504(c)(1)).

2. Section 102.35 is amended by revising the heading and by further revising paragraph (a)(9) to read as follows:

**§ 102.35 Duties and powers of administrative law judges; stipulations of cases to administrative law judges or to the Board; assignment and powers of settlement judges.**

(a) * * *

(9) To approve stipulations, including stipulations of facts that waive a hearing and provide for a decision by the administrative law judge. Alternatively, the parties may agree to waive a hearing and decision by an administrative law judge and submit directly to the Executive Secretary a stipulation of facts, which, if approved, provides for a decision by the Board. A statement of the issues presented should be set forth in the stipulation of facts and each party should also submit a short statement (no

more than three pages) of its position on the issues. If the administrative law judge (or the Board) approves the stipulation, the administrative law judge (or the Board) will set a time for the filing of briefs. In proceedings before an administrative law judge, no further briefs shall be filed except by special leave of the administrative law judge. In proceedings before the Board, answering briefs may be filed within 14 days, or such further period as the Board may allow, from the last date on which an initial brief may be filed. No further briefs shall be filed except by special leave of the Board. At the conclusion of the briefing schedule, the judge (or the Board) will decide the case or make other disposition of it.

* * * * *

Dated, Washington, DC, December 21, 2001.

By direction of the Board.

**John J. Toner,**

*Executive Secretary, National Labor Relations Board.*

[FR Doc. 02–80 Filed 1–4–02; 8:45 am]

BILLING CODE 7545–01–P

## NATIONAL LABOR RELATIONS BOARD

### 29 CFR Part 102

### Procedural Rules Eliminating Requirement to File Extra Copies of Unfair Labor Practice Charges and Representation Petitions With the National Labor Relations Board

**AGENCY:** National Labor Relations Board.

**ACTION:** Final rule.

**SUMMARY:** The National Labor Relations Board is revising its rules that govern filing extra copies of unfair labor practice charges and representation petitions with the Board. The revisions are being adopted in order to relieve persons filing charges and petitions from the requirement of having to file extra copies which, as a practical matter, the Board no longer needs. The intended effect of the revisions is to relieve members of the public of paperwork burdens without adversely affecting case processing.

**EFFECTIVE DATE:** February 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570. Telephone: (202) 273–1936.

**SUPPLEMENTARY INFORMATION:** At present, the rules of the National Labor Relations Board (NLRB) provide that parties filing unfair labor practice charges (section 102.11, 29 CFR 102.11), petitions for certification or decertification (section 102.60(a), 29 CFR 102.60(a)), and petitions for referendum under 29 U.S.C. sec. 9(e)(1) of the National Labor Relations Act (section 102.83, 29 CFR 102.83) must file an original and at least four additional copies of such charges or petitions. Although the number of copies required has changed slightly over the years, the requirement to file extra copies of charges and petitions dates to the inception of the NLRB in 1936, a time predating modern photocopy methods. In those days, extra copies were required in order to facilitate service of those documents by the Board on other parties as well as for the Board to maintain extra copies that its staff needed when processing the charges or petitions. Upon receipt of the charge or petition, a Board employee would assign a case number to the incoming document, stamp that number on each of the copies, and then serve or distribute those copies as needed.

At the present time, Regional Offices of the Board generally find that it is simpler and more cost-efficient just to enter the date and the number of the case on the original of the filed charge or petition and then photocopy that document for service and distribution. This practice was implicitly recognized when the Board's Rules were amended in 1995 to permit filing charges and petitions by facsimile transmission and not to require extra copies filed in that manner, beyond the requirement to send in a signed original in addition to the document filed by facsimile. The amendments the Board is now making remove the requirements to file extra copies of charges or petitions filed in any manner.

Finally, in reviewing this proposal, we found that we had omitted to include in § 102.83 a reference to the requirement that persons who file petitions covered by that section by facsimile transmission shall also file an original for the Agency's records. We now amend § 102.83 to include that reference.

**Executive Order 12866**

The regulatory review provisions of Executive Order 12866 do not apply to independent regulatory agencies. However, even if they did, the proposed changes in the Board's rules would not be classified as ''significant rules'' under Section 6 of Executive Order 12866, because they will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $ 100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these rules will not have a significant economic impact on a substantial number of small business entities as they merely relieve members of the public of an unnecessary requirement to file extra copies of charges or petitions with the NLRB.

**Paperwork Reduction Act**

These rules are not subject to Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since they do not contain any new information collection requirements.

**Small Business Regulatory Enforcement Fairness Act**

Because these rules relate to Agency procedure and practice and merely modify the agency's filing procedures, the Board has determined that the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

**List of Subjects in 29 CFR Part 102**

Administrative practice and procedure, Labor management relations.

To relieve members of the public of the unnecessary burden of filing extra copies of charges or petitions with the NLRB, the Board amends 29 CFR part 102 as follows:

## PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for 29 CFR part 102 continues to read as follows:

**Authority:** Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117 also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.11 is revised to read as follows:

### § 102.11 Forms; jurat; or declaration.

Such charges shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalty of perjury that its contents are true and correct (see 28 U.S.C. Sec. 1746). One original of such charge shall be filed. A party filing a charge by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper.

3. Section 102.60(a) is revised to read as follows:

### § 102.60 Petitions.

(a) *Petition for certification or decertification; who may file; where to file; withdrawal.*—A petition for investigation of a question concerning representation of employees under paragraphs (1)(A)(i) and (1)(B) of section 9(c) of the Act (hereinafter called a petition for certification) may be filed by an employee or group of employees or any individual or labor organization acting in their behalf or by an employer. A petition under paragraph (1)(A)(ii) of section 9(c) of the Act, alleging that the individual or labor organization which has been certified or is being currently recognized as the bargaining representative is no longer such representative (hereinafter called a petition for decertification), may be filed by any employee or group of employees or any individual or labor organization acting in their behalf. Petitions under this section shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalty of perjury, that its contents are true and correct (see 28 U.S.C. Sec. 1746). One original of the petition shall be filed. A person filing a petition by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. Except as provided in § 102.72, such petitions shall be filed with the Regional Director for the Region wherein the bargaining unit exists, or, if the bargaining unit exists in two or more Regions, with the Regional Director for any of such Regions. Prior to the transfer of the case to the Board, pursuant to § 102.67, the petition may be withdrawn only with the consent of the Regional Director with whom such petition was filed. After the transfer of the case to the Board, the petition may be withdrawn only with the consent of the Board. Whenever the Regional Director or the Board, as the case may be, approves the withdrawal of any petition, the case shall be closed.

* * * * *

4. Section 102.83 is revised to read as follows:

### § 102.83 Petition for referendum under section 9(e)(1) of the Act; who may file; where to file; withdrawal.

A petition to rescind the authority of a labor organization to make an agreement requiring as a condition of employment membership in such labor organization may be filed by an employee or group of employees on behalf of 30 percent or more of the employees in a bargaining unit covered by such an agreement. The petition shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of his knowledge and belief. One original of the petition shall be filed with the Regional Director wherein the bargaining unit exists or, if the unit exists in two or more Regions, with the Regional Director for any of such Regions. A person filing a petition by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. The petition may be withdrawn only with the approval of the Regional Director with whom such petition was filed, except that if the proceeding has been transferred to the Board, pursuant to § 102.67, the petition may be withdrawn only with the consent of the Board. Upon approval of the withdrawal of any petition the case shall be closed.

Dated, Washington, DC, December 21, 2001.

By Direction of the Board.

**John J. Toner,**

*Executive Secretary, National Labor Relations Board.*

[FR Doc. 02–79 Filed 1–4–02; 8:45 am]

**BILLING CODE 7545–01–P**

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Parts 1912 and 1912a

**RIN 1218–AC04**

## Advisory Committees

**ACTION:** Final rule; amendments to procedural rules.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) is amending its rules governing membership on advisory committees to clarify that the Secretary has the discretion to remove and replace an advisory committee member at any time. The advisory committee rules, including the rules dealing with the tenure of members, are rules of agency organization, practice, or procedure, for which public notice and comment are not required.

**DATES:** These amendments are effective January 7, 2002.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Friedman, OSHA Office of Public Affairs, U. S. Department of Labor, 200 Constitution Avenue, N.W., Room N3647, Washington, DC 20210, phone (202) 693–1999.

**SUPPLEMENTARY INFORMATION:** Section 7(a)(1) of the Occupational Safety and Health Act, 29 U.S.C. 656(a)(1), establishes a National Advisory Committee on Occupational Safety and Health (NACOSH). The purpose of NACOSH is to ''advise, consult with, and make recommendations to the Secretary [of Labor] and the Secretary of Health and Human Services on matters relating to the administration of the Act.'' 29 U.S.C. 656(a)(2). NACOSH consists of 12 members, appointed by the Secretary of Labor, who represent management, labor, occupational safety and occupational health professions, and the public.

The Construction Safety Act (CSA), 40 U.S.C. 333, created the Advisory Committee on Construction Safety and Health (ACCSH), to advise the Secretary on standard-setting and other matters

related to the administration of the CSA. See 29 CFR 1912.3. In addition, section 7(b) of the Act, 29 U.S.C. 656(b), gives the Secretary of Labor the authority to establish additional advisory committees to assist in the Secretary's standard-setting functions under 29 U.S.C. 655. Such committees may be either continuing committees or ad hoc committees established to render advice in particular rulemaking proceedings. 29 CFR 1912.2. The Secretary has exercised that authority to establish, as a continuing committee, the Maritime Advisory Committee for Occupational Safety and Health (MACOSH), and has also established ad hoc committees to advise on particular rules.

Advisory committees have played an important role in the administration of the OSH Act by providing a means for the Secretary and the Assistant Secretary for Occupational Safety and Health to obtain the advice of persons representing a variety of interests on how best to fulfill the Act's objective of ensuring that American workers have safe and healthful workplaces. However, the advice the committees render is only valuable to the Secretary and the Assistant Secretary if they have full confidence in the members of the committees. To ensure such confidence, the Secretary must have the discretion to remove and replace any member in whom she lacks confidence.

The current regulations governing the tenure of all advisory committee members except those on NACOSH give the Secretary complete discretion to appoint members who have her confidence. Section 1912.3(e), which applies to ACCSH, allows the Secretary to remove and replace a member ''in the interests of the administration of legislation involved.'' Section 1912.10(a), which governs other continuing advisory committees, allows the Secretary to remove a member ''in the interest of the administration of the Act.'' Similarly, section 1912.11, which deals with ad hoc committees, allows the Secretary to remove a member ''in the interest of the administration of the Act.'' These provisions also provide for the Secretary to remove a member of an advisory committee if that member becomes unable to serve or no longer meets the representational requirements of the Act. The current regulation governing tenure of members on NACOSH is unique in that it does not provide for removal of a member at the discretion of the Secretary. A member may be removed only if he or she becomes unable to serve, if the Secretary determines that he or she no longer meets the representational requirements of the Act. 29 CFR 1912a.3.

OSHA believes that the same removal requirements should apply to all advisory committees. As already discussed, the Secretary and Assistant Secretary must have complete confidence in all advisory committee members and must be able to remove any member in whom they have lost confidence. Therefore, section 1912a.3, which applies to NACOSH, is being amended to be consistent with the regulations applicable to the other advisory committees under the Act to give the Secretary full discretion to remove any advisory committee member for any reason. By providing that the Secretary has complete discretion to remove a member, it is no longer necessary to include the specific bases upon which a member may be removed (i.e., unable to serve or no longer meets the representational requirements of the Act). Therefore, the sections pertaining to removal—1912a.3, 1912.3(a), 1912.10(a), and 1912.11—are being amended so that they are worded consistently and provide that the Secretary may, in his or her discretion, remove any member at any time.

These amendments constitute a rule of agency organization, practice, or procedure. Hence, notice-and-comment procedures are not required. 5 U.S.C. 553(b). These amendments are to take effect immediately. Given the technical and procedural nature of these amendments, the agency finds that it is unnecessary to provide 30 days before this rule takes effect, and hence has good cause for making the effective date immediate pursuant to 5 U.S.C. 553(d)(3).

**AUTHORITY AND SIGNATURE:** This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor. It is issued pursuant to sections 7 and 8(g)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656, 657), 5 U.S.C. 553, and Secretary's Order 3–2000 (65 FR 50017).

**List of Subjects**

*29 CFR Part 1912*

Advisory committees, Freedom of information, Occupational safety and health.

*29 CFR Part 1912a*

Advisory committees, Occupational safety and health.

Signed at Washington, DC, this 28th day of December, 2001.

**John L. Henshaw,**

*Assistant Secretary of Labor.*

Accordingly, parts 1912 and 1912a of 29 CFR are hereby amended as set forth below:

## PART 1912—[AMENDED]

1. The authority citation for 29 CFR part 1912 is revised to read as follows:

**Authority:** Secs. 4, 6, 7, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 656, 657); 5 U.S.C. 553; Federal Advisory Committee Act (5 U.S.C. App. 2); sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 3–2000 (65 FR 50017), as applicable.

2. Paragraph (e) of § 1912.3 is revised to read as follows:

### § 1912.3 Advisory Committee on Construction Safety and Health.

* * * * *

(e) Except as provided in paragraphs (f) through (j) of this section, each member of the Advisory Committee shall serve for a period of 2 years. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint for the remainder of the unexpired term a new member who shall represent the same interest as his or her predecessor.

* * * * *

3. Paragraph (a) of § 1912.10 is revised to read as follows:

### § 1912.10 Terms of continuing committee members.

(a) Each member of a continuing committee established under section 7(b) of the Act, other than those appointed to a committee when it is formed initially shall serve for a period of 2 years. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint for the remainder of the unexpired term a new member who shall represent the same interest as his or her predecessor.

* * * * *

4. Section 1912.11 is revised to read as follows:

**§ 1912.11 Terms of ad hoc committee members.**

Each member of an ad hoc advisory committee shall serve for such period as the Assistant Secretary may prescribe in his notice of appointment. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint a new member to serve for the remaining portion of the period prescribed in the notice appointing the original member of the committee.

## PART 1912a—[AMENDED]

5. The authority citation for 29 CFR Part 1912a is revised to read as follows:

**Authority:** Secs. 4, 6, 7, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 656, 657); 5 U.S.C. 553; Federal Advisory Committee Act (5 U.S.C. App. 2); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 3–2000 (65 FR 50017), as applicable.

6. Section 1912a.3 is revised to read as follows:

**§ 1912a.3 Terms of membership.**

Commencing on July 1, 1973, the terms of membership shall be divided into two classes, each consisting of six members. Members of the first class shall be appointed for a term of one year. Members of the second class shall be appointed for a term of two years. Thereafter, members shall be appointed for regular terms of two years. At all times the Committee shall be composed of representatives of management, labor, and occupational safety and health professions, and of the public. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint for the remainder of the unexpired term a new member who shall represent the same interest as his or her predecessor.

[FR Doc. 02–122 Filed 1–4–02; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF VETERANS AFFAIRS

## 38 CFR Part 52

**RIN 2900–AJ74**

## Per Diem for Adult Day Health Care of Veterans in State Homes

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document establishes regulations setting forth a mechanism for paying per diem to State homes providing adult day health care to eligible veterans. The intended effect of the rule is to ensure that veterans receive high quality care in State homes.

**DATES:** *Effective Date:* February 6, 2002.

The incorporation by reference of certain publications in this rule is approved by the Director of the Office of the Federal Register as of February 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** L. Nan Stout, Chief, State Home Per Diem Program (114), Veterans Health Administration, 202–273–8538.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on June 28, 2000 (65 FR 39835), we proposed to establish a new part 52 setting forth a mechanism for the Department of Veterans Affairs (VA) to pay per diem to State homes providing adult day health care to eligible veterans. We provided a 60-day comment period which ended August 28, 2000. We received comments from six states and one association. The issues raised in the comments are discussed below. Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule with changes explained below.

One commenter commended VA for including provisions in the rule to ensure that State homes meet the fire and safety provisions of the National Fire Protection Association's Life Safety Code entitled ''NFPA 101, Life Safety Code.'' The final rule incorporates, by reference, the 2000 edition instead of the 1997 edition since the Life Safety Code has been updated.

A commenter questioned VA's authority to establish the provisions in § 52.40 that provide for State home payments to be made on a per diem basis. The commenter asserted that instead of per diem payments the payments should be made based on individual contracts between VA and the State. The commenter further asserted that the proposed per diem amount is inadequate to cover State costs, including construction and other capital expenditures. No changes are made based on these comments. In 38 USC 1741(a)(2) VA is authorized to make payments to State homes for adult day health care only on a per diem basis at a rate determined by VA. We believe Congress intended VA to determine one national per diem as is required for per diem payments for domiciliary, nursing home, or hospital care. We also do not believe this statute can be interpreted to permit contracting for care in State homes because it requires VA to ''determine'' a per diem rate. This per diem rate is not intended to cover costs of construction and capital expenditures. To obtain VA assistance in paying for those costs, States may apply for a State home construction or acquisition grant established under 38 USC 8131–8136.

One commenter stated that staffing would be cost-prohibitive with the low per diem amount paid by VA. No changes are made based on this comment. The per diem amount is a grant to a State under 38 U.S.C. 1741 for adult day health care, but was not intended to cover the total cost of care.

The proposed regulations at § 52.40(a)(2) state that per diem will be paid only for a day that the veteran is under care of the facility at least six hours. Three commenters asserted that the six-hour requirement should be lessened. They argue that their costs are fixed and based on the projected numbers for each day. We believe that we should provide per diem only for periods for which a veteran would be provided the full range of therapeutic activities that the veteran needs. Upon further reflection we believe this still can be accomplished if the veteran is present for at least three hours. Consistent with this conclusion and administrative concerns, we have changed the rule to allow for one per diem payment for a period of six hours or more in one calendar day or any two periods of at least three hours each (but each less than six hours) in any two calendar days in a calendar month.

The proposed regulations at § 52.50 set forth eligibility requirements for veterans receiving adult day health care on whose behalf VA pays per diem. One commenter asserted that the criteria are too restrictive. No changes are made based on this comment. The eligibility criteria reflect statutory requirements that may not be changed by regulation.

The proposed rule at § 52.80 provides that participants in the adult day health care program must meet certain conditions, including two of seven indicators. One of the indicators is met simply by being ''75 years old or over.''

One commenter asserted that the indicator should include individuals 65 years of age or older. No changes are made based on this comment. Age is only one of the seven criteria. We believe that 75 is the appropriate threshold for concluding that meeting at least one of the other criteria would customarily create the types of needs requiring admission to an adult day health care facility. Those younger than 75 could still meet the admission criteria if they meet at least two of the other criteria.

The proposed regulations at § 52.110(c)(1) provided a comprehensive assessment as follows: ''The program management must make a comprehensive assessment of a participant's needs using (on and after January 1, 2002) Health Care Administration Long-term Care Resident Assessment Instrument Version 2.0.'' These provisions reflect standards for inpatient care. We are changing the assessment tool to the ''Minimum Data Set for Home Care (MDS-HC) Instrument Version 2.0'' to provide a tool appropriate for outpatient type settings such as adult day health care.

The proposed regulations at § 52.110(c)(1)(ii) stated that one initial home visit must be conducted as part of the needs assessment for the veteran. Three commenters asserted that this should not be included as a requirement. Upon further consideration, we agree that these provisions should not be mandatory. Although we recommend home visits, information regarding the home environment can be obtained by other means, e.g., from family members. We have revised the regulations accordingly.

The proposed regulations at § 52.130 state that VA recommends that the nurse on duty at the adult day health care facility be a geriatric nurse practitioner or clinical nurse specialist. One commenter indicated that this would cause an undue hardship. We make no changes based on this comment. This is only a recommendation, not a requirement.

The proposed regulations at § 52.140(e)(1) provide that adult day health care patients must be provided at least two meals daily. Three commenters asserted that one meal a day should be sufficient. Most veterans stay at least six hours a day and come in time for breakfast. Accordingly, we believe that adult day health care facilities must provide at least two meals for these veterans. However, for a veteran stay of no more than four hours there would be no need to provide two meals. Accordingly, the final rule is modified to require two meals a day for a veteran stay of more than four hours and only one meal a day for a veteran stay of less than four hours.

One commenter noted a typographical error in proposed 52.150(b)(3) which refers to a paragraph ''(f)''. The reference, which is corrected by this document, should have been to paragraph ''(e)''.

The proposed regulations at § 52.200 set forth standards for the physical environment of State home adult day health care facilities. One commenter asserted that these provisions would be too demanding if applied to existing facilities. No changes are made based on this comment. Currently, there are no State homes receiving per diem under VA's State adult day health care program. We believe the proposed standards for physical environment represent the minimum standards needed to provide high quality care.

The proposed regulations at § 52.200(b)(3) state that the indoor space for an adult day health care facility must be at least 60 square feet per participant excluding office space for staff. One commenter asserted that the regulations should impose a 30-square feet requirement. No changes are made based on this comment. We believe that 60 square feet of program space per participant is necessary for participants to have access to the full range of program activities, services, and equipment that is needed to provide high quality care.

The proposed rule at § 52.210(e) states that if a program is operated by an entity contracting with the State, the State must assign a State employee to monitor the operations of the facility on a full-time, onsite basis. One commenter questioned whether the State employee would qualify as full-time, onsite if such individual on a full-time basis oversaw the adult day health care facility while also overseeing a colocated State home for nursing home and domiciliary services. We believe that the oversight function could be met under the factual situation presented by the comments. We have amended the rule accordingly.

The proposed regulations at § 52.210(g)(3) provide that ''[t]he staff-participant ratio must be sufficient in number and skills (at least one staff to four participants) to ensure compliance with the standards of this part.'' Three commenters asserted that this should be no more stringent than the ratio of one staff to 4–6 participants, which VA adult day health care facilities use. We agree that under the criteria in § 52.210(g)(3) the ratio of one staff to 4–6 participants would be adequate to meet the needs of the participants. Accordingly, we have changed the provisions in § 52.210(g)(3) to allow the ratio of one staff to 4–6 participants.

The proposed rule at § 52.210(s) states that a facility recognized as a State home for providing adult day health care may only provide adult day health care in the areas of the facility recognized as a State home for providing adult day health care. One commenter asserted that this requirement would be too demanding. No changes are made based on this comment. We believe that designated spaces are needed for each level of care. Otherwise, the special needs for each program might not be adequately addressed.

The proposed regulations at § 52.220(a) state that ''the adult day health care program management must provide, arrange, or contract for transportation'' for participants. Three commenters asserted that State homes should not be required to provide transportation from a veteran's home to the adult day health care facility. We believe that transportation should be included in the cost of operating the adult day health care facility. Transportation is the single most important service the State can provide for a successful adult day health care program. The only way to ensure availability of transportation is to include it as a responsibility of a State. However, we also believe that the veteran or the veteran's family should be able to decline transportation offered by the adult day health care program management and make their own arrangements for the transportation. These concepts are consistent with the original purpose in the proposed rule. Changes are made to the final rule to more clearly reflect these concepts.

The proposed regulations at § 52.220(c) provide that all vehicles transporting participants to and from adult day health care facilities must be equipped with a device for two-way communication and one additional staff person besides the driver. One commenter asserted that these provisions should be deleted, and another commenter asserted that it was not necessary to have an additional staff person besides the driver. We have retained the provisions requiring the vehicle to be equipped with a device for two-way communication. This is necessary to ensure that the adult day health care officials would be able to provide any necessary information or assistance in an emergency situation. However, we are deleting the proposed requirement of one additional staff person besides the driver. We believe the driver would be able to provide or

obtain assistance as necessary for patient safety.

The provision at § 52.40 sets forth the per diem amount for eligible veterans participating in a State home adult day health care. This is the amount authorized under 38 U.S.C. 1741 and Congressionally-approved in the budget. For fiscal year 2002 the amount is 34.64. Accordingly, the final rule includes the rate for fiscal year 2002. In addition to academic requirements, the proposed rule at § 52.2 provided that a clinical nurse specialist must have at least two years of successful clinical practice in the specialized area of nursing practice following academic preparation. Upon further review, we have determined that the academic requirements are sufficient to qualify an individual to conduct the duties of a clinical nurse specialist. Accordingly, we have deleted the practice requirement.

In § 52.10, we included transition provisions for recognized adult day health care facilities. However, we are deleting these provisions because there are no adult day health care facilities that would be eligible to utilize the transition provisions.

In § 52.100 we included requirements that a therapeutic recreation specialist must be licensed or registered, if applicable, by the State in which the individual practices. We are deleting the reference to ''registered'' since no State registers therapeutic recreation specialists.

In § 52.130, we proposed that the nurse staffing must be based on a staffing methodology that uses case mix. We have deleted this provision because the needs of patients are similar in adult day health care facilities and there is no need for case mix.

In § 52.200, we proposed that an adult day health care facility provide a quiet room that, among other things, would allow for rest. To accomplish this the room must have a bed. We have amended these provisions to specify that the room must have a bed. Also, editorial changes are made for purposes of clarity.

**Paperwork Reduction Act of 1995**

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), collections of information are set forth in the provisions of §§ 52.20, 52.30, 52.40, 52.70, 52.71, 52.80, 52.90, 52.100, 52.110, 52.120, 52.130, 52.150, 52.160, 52.180, 52.190 and 52.210 of this rule. Many of these collections of information require the submission to VA of information on forms published at 38 CFR part 58.

The information collections in this document concern various activities related to the operation of a State home providing adult day health care to eligible veterans.

The collection of information contained in the notice of proposed rulemaking was submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)).

Interested parties were invited to submit comments on the collection of information. However, no comments were received. OMB has approved this information under control number 2900–0160.

VA is not authorized to impose a penalty on persons for failure to comply with information collection requirements which do not display a current OMB control number, if required.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. All of the entities that are subject to this final rule are State government entities under the control of State governments. Of the 102 State homes, all are operated by State governments except for 20 that are operated by entities under contract with State governments. These contractors are not small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

**Executive Order 12866**

This document has been reviewed by OMB pursuant to Executive Order 12866.

**Executive Order 13132**

This document does not have federalism implications under Executive Order 13132.

**List of Subjects in 38 CFR Part 52**

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Government programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Incorporation by reference, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: October 17, 2001.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reason set forth in the preamble, 38 CFR Chapter I is amended by adding a new part 52 to read as follows.

## PART 52—PER DIEM FOR ADULT DAY HEALTH CARE OF VETERANS IN STATE HOMES

### Subpart A—General

Sec.

52.1 Purpose.
52.2 Definitions.

### Subpart B—Obtaining Per Diem for Adult Day Health Care in State Homes

52.10 Per diem based on recognition and certification.
52.20 Application for recognition based on certification.
52.30 Recognition and certification.

### Subpart C—Per Diem Payments

52.40 Monthly payment.
52.50 Eligible veterans.

### Subpart D—Standards

52.60 Standards applicable for payment of per diem.
52.61 General requirements for adult day health care program.
52.70 Participant rights.
52.71 Participant and family caregiver responsibilities.
52.80 Enrollment, transfer and discharge rights.
52.90 Participant behavior and program practices.
52.100 Quality of life.
52.110 Participant assessment.
52.120 Quality of care.
52.130 Nursing services.
52.140 Dietary services.
52.150 Physician services.
52.160 Specialized rehabilitative services.
52.170 Dental services.
52.180 Administration of drugs.
52.190 Infection control.
52.200 Physical environment.
52.210 Administration.
52.220 Transportation.

**Authority:** 38 U.S.C. 101, 501, 1741–1743, unless otherwise noted.

## Subpart A—General

### § 52.1 Purpose.

This part sets forth the mechanism for paying per diem to State homes providing adult day health care to eligible veterans and includes quality assurance requirements that are intended to ensure that veterans receive high quality care in State homes.

### § 52.2 Definitions.

For purposes of this part—

*Activities of daily living (ADLs)* means the functions or tasks for self-care usually performed in the normal course of a day, i.e., mobility, bathing, dressing, grooming, toileting, transferring, and eating.

*Clinical nurse specialist* means a licensed professional nurse with a master's degree in nursing and a major in a clinical nursing specialty from an academic program accredited by the National League for Nursing.

*Facility* means a building or any part of a building for which a State has submitted an application for recognition as a State home for the provision of adult day health care or a building, or any part of a building, which VA has recognized as a State home for the provision of adult day health care.

*Instrumental activities of daily living (IADLs)* means functions or tasks of independent living, i.e., shopping, housework, meal preparation and cleanup, laundry, taking medication, money management, transportation, correspondence, and telephone use.

*Nurse practitioner* means a licensed professional nurse who is currently licensed to practice in the State; who meets the State's requirements governing the qualifications of nurse practitioners; and who is currently certified as an adult, family, or gerontological nurse practitioner by the American Nurses Association.

*Physician* means a doctor of medicine or osteopathy legally authorized to practice medicine or surgery in the State.

*Physician assistant* means a person who meets the applicable State requirements for physician assistant, is currently certified by the National Commission on Certification of Physician Assistants (NCCPA) as a physician assistant, and has an individualized written scope of practice that determines the authorization to write medical orders, prescribe medications and to accomplish other clinical tasks under the appropriate supervision by the primary care physician.

*Primary physician* or *Primary care physician* means a designated generalist physician responsible for providing, directing and coordinating health care that is indicated for the residents.

*State* means each of the several States, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

*State home* means a home approved by VA which a State established primarily for veterans disabled by age, disease, or otherwise, who by reason of such disability are incapable of earning a living. A State home may provide domiciliary care, nursing home care, adult day health care, and hospital care. Hospital care may be provided only when the State home also provides domiciliary and/or nursing home care.

VA means the U.S. Department of Veterans Affairs.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

## Subpart B—Obtaining Per Diem for Adult Day Health Care in State Homes

### § 52.10 Per diem based on recognition and certification.

*VA* will pay per diem to a State for providing adult day health care to eligible veterans in a facility if the Under Secretary for Health recognizes the facility as a State home based on a current certification that the facility management meet the standards of subpart D of this part.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

### § 52.20 Application for recognition based on certification.

To apply for recognition and certification of a State home for adult day health care, a State must:

(a) Send a request for recognition and certification to the Under Secretary for Health (10), VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. The request must be in the form of a letter and must be signed by the State official authorized to establish the State home;

(b) Allow VA to survey the facility as set forth in § 52.30(c); and

(c) Upon request from the director of the VA medical center of jurisdiction, submit to the director all documentation required under subpart D of this part.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

### § 52.30 Recognition and certification.

(a)(1) The Under Secretary for Health will make the determination regarding recognition and the initial determination regarding certification, after receipt of a tentative determination from the director of the VA medical center of jurisdiction, regarding whether the facility and program management meet or do not meet the standards of subpart D of this part. The Under Secretary for Health will notify the official in charge of the program, the State official authorized to oversee operations of the State home, the VA Network Director (10N1–22), Assistant Deputy Under Secretary for Health (10N), and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), of the action taken.

(2) For each facility recognized as a State home, the director of the VA medical center of jurisdiction will certify annually whether the facility and program management meet, provisionally meet, or do not meet the standards of subpart D of this part (this certification should be made every 12 months during the recognition anniversary month or during a month agreed upon by the VA medical center director and officials of the State home facility). A provisional certification will be issued by the director only upon a determination that the facility or program management does not meet one or more of the standards in subpart D of this part, that the deficiencies do not jeopardize the health or safety of the residents, and that the program management and the director have agreed to a plan of correction to remedy the deficiencies in a specified amount of time (not more time than the VA medical center of jurisdiction director determines is reasonable for correcting the specific deficiencies). The director of the VA medical center of jurisdiction will notify the official in charge of the program, the State official authorized to oversee the operations of the State home, the VA Network Director (10N1–22), Assistant Deputy Under Secretary for Health (10N) and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), of the certification, provisional certification, or noncertification.

(b) Once a program has achieved recognition, the recognition will remain in effect unless the State requests that the recognition be withdrawn or the Under Secretary for Health makes a final decision that the facility or program management does not meet the standards of subpart D of this part. Recognition of a program will apply only to the facility as it exists at the time of recognition; any annex, branch, enlargement, expansion, or relocation must be separately recognized.

(c) Both during the application process for recognition and after the Under Secretary for Health has recognized a facility, VA may survey the facility as necessary to determine if the facility and program management comply with the provisions of this part. Generally, VA will provide advance notice to the State before a survey occurs; however, surveys may be conducted without notice. A survey, as necessary, will cover all parts of the facility, and include a review and audit of all records of the program that have a bearing on compliance with any of the requirements of this part (including any

reports from State or local entities). For purposes of a survey, at the request of the director of the VA medical center of jurisdiction, the State home adult day care health program management must submit to the director a completed VA Form 10–3567, ''Staffing Profile'', set forth at 38 CFR 58.10. The director of the VA medical center of jurisdiction will designate the VA officials to survey the facility. These officials may include physicians; nurses; pharmacists; dietitians; rehabilitation therapists; social workers; and representatives from health administration, engineering, environmental management systems, and fiscal officers.

(d) If the director of the VA medical center of jurisdiction determines that the State home facility or program management does not meet the standards of this part, the director will notify the State home program manager in writing of the standards not met. The director will send a copy of this notice to the State official authorized to oversee operations of the facility, the VA Network Director (10N1–22), the Assistant Deputy Under Secretary for Health (10N), and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114). The letter will include the reasons for the decision and indicate that the State has the right to appeal the decision.

(e) The State must submit an appeal to the Under Secretary for Health in writing within 30 days of receipt of the notice of failure to meet the standards. In its appeal, the State must explain why the determination is inaccurate or incomplete and provide any new and relevant information not previously considered. Any appeal that does not identify a reason for disagreement will be returned to the sender without further consideration.

(f) After reviewing the matter, including any relevant supporting documentation, the Under Secretary for Health will issue a written determination that affirms or reverses the previous determination. If the Under Secretary for Health decides that the State home facility or program management does not meet the standards of subpart D of this part, the Under Secretary for Health will withdraw recognition and stop paying per diem for care provided on and after the date of the decision. The decision of the Under Secretary for Health will constitute a final VA decision. The Under Secretary for Health will send a copy of this decision to the State home facility and to the State official authorized to oversee the operations of the State home.

(g) In the event that a VA survey team or other VA medical center staff identifies any condition at the State home facility that poses an immediate threat to public or patient safety or other information indicating the existence of such a threat, the director of the VA medical center of jurisdiction will immediately report this to the VA Network Director (10N1–22), Assistant Deputy Under Secretary for Health (10N), Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), and State official authorized to oversee operations of the State home.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

## Subpart C—Per Diem Payments

### § 52.40 Monthly payment.

(a)(1) During Fiscal Year 2002, VA will pay monthly one-half of the total cost of each eligible veteran's adult day health care for each day the veteran is in a facility recognized as a State home for adult day health care, not to exceed $34.64 per diem.

(2) Per diem will be paid only for a day that the veteran is under the care of the facility at least six hours. For purposes of this paragraph a day means

(i) Six hours or more in one calendar day; or

(ii) Any two periods of at least 3 hours each (but each less than six hours) in any two calendar days in a calendar month.

(3) As a condition for receiving payment of per diem under this part, the State must submit a completed VA Form 10–5588, ''State Home Report and Statement of Federal Aid Claimed.'' This form is set forth in full at 38 CFR 58.11.

(4) Initial payments will not be made until the Under Secretary for Health recognizes the State home. However, payments will be made retroactively for care that was provided on and after the date of the completion of the VA survey of the facility that provided the basis for determining that the facility met the standards of this part.

(5) As a condition for receiving payment of per diem under this part, the State must submit to the VA medical center of jurisdiction for each veteran the following completed VA forms: 10–10EZ, ''Application for Medical Benefits'', and 10–10SH, ''State Home Program Application for Care—Medical Certification'', at the time of enrollment and with any request for a change in the level of care (nursing home, domiciliary or hospital care). These forms are set forth in full at 38 CFR 58.12 and 58.13, respectively. If the program is eligible to receive per diem payments for adult day health care for a veteran, VA will pay per diem under this part from the date of receipt of the completed forms required by this paragraph (a)(5), except that VA will pay per diem from the day on which the veteran was enrolled in the program if VA receives the completed forms within 10 days after enrollment.

(b) For determining ''the one-half of the total cost'' under paragraph (a)(1) of this section, total per diem costs for an eligible veteran's adult day health care consist of those direct and indirect costs attributable to adult day health care at the facility divided by the total number of participants enrolled in the adult day health care program. Relevant cost principles are set forth in the Office of Management and Budget (OMB) Circular number A–87, dated May 4, 1995, ''Cost Principles for State, Local, and Indian Tribal Governments'' (OMB Circulars are available at the addresses in 5 CFR 1310.3).

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

### § 52.50 Eligible veterans.

A veteran is an eligible veteran under this part if VA determines that the veteran meets the definition of a veteran in 38 U.S.C. 101, is not barred from receiving this VA care under 38 U.S.C. 5303–5303A, needs adult day health care, and is within one of the following categories:

(a) Veterans with service-connected disabilities;

(b) Veterans who are former prisoners of war;

(c) Veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty;

(d) Veterans who receive disability compensation under 38 U.S.C. 1151;

(e) Veterans whose entitlement to disability compensation is suspended because of the receipt of retired pay;

(f) Veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that such veterans' continuing eligibility for adult day health care is provided for in the judgment or settlement described in 38 U.S.C. 1151;

(g) Veterans who VA determines are unable to defray the expenses of necessary care as specified under 38 U.S.C. 1722(a);

(h) Veterans of the Mexican Border period or of World War I;

(i) Veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation or for a disorder associated with service in the Southwest Asia theater of operations during the Gulf War, as provided in 38 U.S.C. 1710(e);

(j) Veterans who agree to pay to the United States the applicable co-payment determined under 38 U.S.C. 1710(f) and 1710(g), if they seek VA (U.S. Department of Veterans Affairs) hospital, nursing home, or outpatient care.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

## Subpart D—Standards

### § 52.60 Standards applicable for payment of per diem.

The provisions of this subpart are the standards that a State home and program management must meet for the State to receive per diem for adult day health care provided at that facility.

### § 52.61 General requirements for adult day health care program.

Adult day health care must be a therapeutically-oriented outpatient day program, which provides health maintenance and rehabilitative services to participants. The program must provide individualized care delivered by an interdisciplinary health care team and support staff, with an emphasis on helping participants and their caregivers to develop the knowledge and skills necessary to manage care requirements in the home. Adult day health care is principally targeted for complex medical and/or functional needs of geriatric patients.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

### § 52.70 Participant rights.

The participant has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. The program management must protect and promote the rights of each participant, including each of the following rights:

(a) *Exercise of rights.* (1) The participant has the right to exercise his or her rights as a participant of the program and as a citizen or resident of the United States.

(2) The participant has the right to be free of interference, coercion, discrimination, and reprisal from the program management in exercising his or her rights.

(3) The participant has the right to freedom from chemical or physical restraint.

(4) In the case of a participant determined incompetent under the laws of a State by a court of jurisdiction, the rights of the participant are exercised by the person appointed under State law to act on the participant's behalf.

(b) *Notice of rights and services.* (1) The program management must inform the participant both orally and in writing in a language that the participant understands of his or her rights and all rules and regulations governing participant conduct and responsibilities during enrollment in the program. Such notification must be made prior to or upon enrollment and periodically during the participant's enrollment.

(2) Participants or their legal representatives have the right—

(i) Upon an oral or written request, to access all records pertaining to them including current participant records within 24 hours (excluding weekends and holidays); and

(ii) After receipt of their records for review, to purchase, at a cost not to exceed the community standard, photocopies of the records or any portions of them upon request and with two working days advance notice to the facility management.

(3) Participants have the right to be fully informed in language that they can understand of their total health status.

(4) Participants have the right to refuse treatment, to refuse to participate in patient activities, to refuse to participate in experimental research, and to formulate an advance directive as specified in paragraph (a)(7) of this section.

(5) The program management must inform each participant before, or at the time of enrollment, and periodically during the participant's stay, of services available in the facility and of charges for those services to be billed to the participant.

(6) The program management must furnish a written description of legal rights which includes a statement that the participant may file a complaint with the State (agency) concerning participant abuse and neglect.

(7) The program management must have written policies and procedures regarding advance directives (e.g., living wills). These requirements include provisions to inform and provide written information to all participants concerning the right to accept or refuse medical or surgical treatment and, at the individual's option, formulate an advance directive. This includes a written description of the facility's policies to implement advance directives and applicable State law.

(8) Notification of changes. (i) Program management must immediately inform the participant; consult with the primary physician; and notify the participant's legal representative or an interested family member when there is—

(A) An accident involving the participant which results in injury and has the potential for requiring physician intervention;

(B) A significant change in the participant's physical, mental, or psychosocial status (e.g., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) A decision to transfer or discharge the participant from the program.

(ii) The program management must also promptly notify the participant and the participant's legal representative or interested family member when there is a change in resident rights under Federal or State law or regulations as specified in paragraph (b)(1) of this section.

(iii) The program management must record and periodically update the address and phone number of the participant's legal representative, or interested family member, and the primary physician.

(c) *Free choice.* (1) The participant has the right to—

(i) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the participant's well-being; and

(ii) Unless determined incompetent or otherwise determined to be incapacitated under the laws of the State, participate in planning care and treatment or changes in care and treatment.

(2) If the participant is determined incompetent or otherwise determined to be incapacitated under the laws of the State, the participant's legal representative or interested family member(s) has the right to participate in planning care and treatment or changes in care and treatment.

(d) *Privacy and confidentiality.* Participants have the right to privacy and confidentiality of their personal and clinical records.

(1) Participants have a right to privacy in their medical treatment and personal care.

(2) Except as provided in paragraph (d)(3) of this section, participants may approve or refuse the release of personal

and clinical records to any individual outside the facility.

(3) The participant's right to refuse release of personal and clinical records does not apply when—

(i) The participant is transferred to another health care institution; or

(ii) The release is required by law.

(e) *Grievances.* A participant has the right to—

(1) Voice grievances without discrimination or reprisal. Participants may voice grievances with respect to treatment received and not received; and

(2) Prompt efforts by facility management to resolve grievances the participant may have, including those with respect to the behavior of other participants.

(f) *Examination of survey results.* A participant has the right to—

(1) Examine the results of the most recent VA survey with respect to the program. The program management must make the results available for examination in a place readily accessible to participants, and must post a notice of their availability; and

(2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

(g) *Work.* The participant has the right to—

(1) Refuse to perform services for the facility;

(2) Perform services for the facility, if he or she chooses, when—

(i) The facility has documented the need or desire for work therapy in the plan of care;

(ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;

(iii) Compensation for (work therapy) paid services is at or above prevailing rates; and

(iv) The participant agrees to the work therapy arrangement described in the plan of care.

(h) *Access and visitation rights.* (1) The program management must provide immediate access to any participant by the following:

(i) Any representative of the Under Secretary for Health;

(ii) Any representative of the State;

(iii) The State long-term care ombudsman;

(iv) Immediate family or other relatives of the participant subject to the participant's right to deny or withdraw consent at any time; and

(v) Others who are visiting subject to reasonable restrictions and the participant's right to deny or withdraw consent at any time.

(2) The program management must provide reasonable access to any participant by any entity or individual that provides health, social, legal, or other services to the participant, subject to the participant's right to deny or withdraw consent at any time.

(3) The program management must allow representatives of the State Ombudsman Program to examine a participant's clinical records with the permission of the participant or the participant's legal representative, subject to State law.

(i) *Telephone.* The participant has the right to reasonable access to use a telephone where calls can be made without being overheard.

(j) *Personal property.* The participant has the right to have at least one change of personal clothing.

(k) *Self-administration of drugs.* An individual participant may self-administer drugs if the interdisciplinary team has determined that this practice is safe for the individual and is a part of the care plan.

(Authority: 38 U.S.C. 101, 501, 1741–1743)
(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

### § 52.71 Participant and family caregiver responsibilities.

The program management has a written statement of participant and family caregiver responsibilities that are posted in the facility and provided to the participant and caregiver at the time of the intake screening. The Statement of responsibilities must include the following:

(a) Treat personnel with respect and courtesy;

(b) Communicate with staff to develop a relationship of trust;

(c) Make appropriate choices and seek appropriate care;

(d) Ask questions and confirm understanding of instructions;

(e) Share opinions, concerns, and complaints with the program director;

(f) Communicate any changes in the participant's condition;

(g) Communicate to the program director about medications and remedies used by the participant;

(h) Let the program director know if the participant decides not to follow any instructions or treatment; and

(i) Communicate with the adult day health care staff if the participant is unable to attend the adult day health care program.

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

### § 52.80 Enrollment, transfer and discharge rights.

(a) Participants in the adult day health care program must meet the provisions of this part that apply to participants and—

(1) Must meet at least two of the following indicators:

(i) Dependence in two or more activities of daily living (ADLs).

(ii) Dependence in three or more instrumental activities of daily living (IADLs).

(iii) Advanced age, i.e., 75 years old or over.

(iv) High use of medical services, i.e., three or more hospitalizations in past 12 months; or 12 or more hospitalizations, outpatient clinic visits; or emergency evaluation unit visits, in the past 12 months.

(v) Diagnosis of clinical depression.

(vi) Recent discharge from nursing home or hospital.

(vii) Significant cognitive impairment, particularly when characterized by multiple behavior problems;

(2) Must have a supportive living arrangement sufficient to meet their health care needs when not participating in the adult day health care program; and

(3) Must be able to benefit from the adult day health care program.

(b) *Transfer and discharge.* (1) *Definition.* Transfer and discharge includes movement of a participant to a program outside of the adult day health care program whether or not that program or facility is in the same physical plant.

(2) *Transfer and discharge requirements.* All participants' preparedness for discharge from adult day health care must be a part of a comprehensive care plan. The possible reasons for discharge must be discussed with the participant and family members at the time of intake screening. Program management must permit each participant to remain in the program, and not transfer or discharge the participant from the program unless—

(i) The transfer or discharge is necessary for the participant's welfare and the participant's needs cannot be met in the adult day health care setting;

(ii) The transfer or discharge is appropriate because the participant's health has improved sufficiently so the participant no longer needs the services provided in the adult day health care setting;

(iii) The safety of individuals in the program is endangered;

(iv) The health of individuals in the program would otherwise be endangered;

(v) The participant has failed, after reasonable and appropriate notice, to

pay for participation in the adult day health care program; or

(vi) The adult day health care program ceases to operate.

(3) *Documentation.* When the facility transfers or discharges a participant under any of the circumstances specified in paragraphs (b)(2)(i) through (vi) of this section, the primary physician must document the reason for such action in the participant's clinical record.

(4) *Notice before transfer.* Before a facility transfers or discharges a participant, the program management must—

(i) Notify the participant and a family member or legal representative of the participant of the transfer or discharge and the reasons for the move in writing and in a language and manner they can understand;

(ii) Record the reasons in the participant's clinical record; and

(iii) Include in the notice the items described in paragraph (a)(6) of this section.

(5) *Timing of the notice.* (i) The notice of transfer or discharge required under paragraph (b)(4) of this section must be made by program management at least 30 days before the participant is transferred or discharged, except when specified in paragraph (b)(5)(ii) of this section.

(ii) Notice may be made as soon as practicable before transfer or discharge when—

(A) The safety of individuals in the program would be endangered;

(B) The health of individuals in the program would be otherwise endangered;

(C) The participant's health improves sufficiently so the participant no longer needs the services provided by the adult day health care program;

(D) The resident's needs cannot be met in the adult day health care program.

(6) *Contents of the notice.* The written notice specified in paragraph (b)(4) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the participant is transferred or discharged, if any;

(iv) A statement that the participant has the right to appeal the action to the State official responsible for the oversight of State Veterans Home programs; and

(v) The name, address and telephone number of the State long-term care ombudsman.

(7) *Orientation for transfer or discharge.* The program management must provide sufficient preparation and orientation to participants to ensure safe and orderly transfer or discharge from the program.

(c) *Equal access to quality care.* The program management must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of source of payment.

(d) *Enrollment policy.* The program management must not require a third party guarantee of payment to the program as a condition of enrollment or expedited enrollment, or continued enrollment in the program. However, program management may require a participant or an individual who has legal access to a participant's income or resources to pay for program care from the participant's income or resources, when available.

(e) *Hours of operation.* Each adult day health care program must provide at least 8 hours of operation five days a week. The hours of operation must be flexible and responsive to caregiver needs.

(f) *Caregiver support.* The adult day health care program must develop a Caregiver Program which offers mutual support, information and education.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

### § 52.90 Participant behavior and program practices.

(a) *Restraints.* (1) The participant has a right to be free from any chemical or physical restraints imposed for purposes of discipline or convenience. When a restraint is applied or used, the purpose of the restraint is reviewed and is justified as a therapeutic intervention and documented in the participant's clinical record.

(i) Chemical restraint is the inappropriate use of a sedating psychotropic drug to manage or control behavior.

(ii) Physical restraint is any method of physically restricting a person's freedom of movement, physical activity or normal access to his or her body.

(2) The program management uses a system to achieve a restraint-free environment.

(3) The program management collects data about the use of restraints.

(4) When alternatives to the use of restraint are ineffective, restraint is safely and appropriately used.

(b) *Abuse.* (1) The participant has the right to be free from mental, physical, sexual, and verbal abuse or neglect, corporal punishment, and involuntary seclusion.

(i) Mental abuse includes humiliation, harassment, and threats of punishment or deprivation.

(ii) Physical abuse includes hitting, slapping, pinching, kicking or controlling behavior through corporal punishment.

(iii) Sexual abuse includes sexual harassment, sexual coercion, and sexual assault.

(iv) Neglect is any impaired quality of life for an individual because of the absence of minimal services or resources to meet basic needs. Neglect may include withholding or inadequately providing food and hydration, clothing, medical care, and good hygiene. It also includes placing the individual in unsafe or unsupervised conditions.

(v) Involuntary seclusion is a participant's separation from other participants against his or her will or the will of his or her legal representative.

(2) [Reserved]

(c) *Staff treatment of participants.* The program management must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of participants and misappropriation of participant property.

(1) The program management must—

(i) Not employ individuals who—

(A) Have been found guilty of abusing, neglecting, or mistreating individuals by a court of law; or

(B) Have had a finding entered into an applicable State registry or with the applicable licensing authority concerning abuse, neglect, mistreatment of individuals or misappropriation of their property; and

(ii) Report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a program assistant or other program staff to the State oversight agency director and licensing authorities.

(2) The program management must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of participant property are reported immediately to the State oversight agency director and to other officials in accordance with State law through established procedures.

(3) The program management must have evidence that all alleged violations are thoroughly investigated, and must prevent potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the State oversight agency director or the designated representative and to other officials in accordance with State law within five working days of the incident, and appropriate corrective action must be taken if the alleged violation is verified.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

**§ 52.100 Quality of life.**

Program management must provide an environment and provide or coordinate care that supports the quality of life of each participant by maximizing the individual's potential strengths and skills.

(a) *Dignity.* The program management must promote care for participants in a manner and in an environment that maintains or enhances each participant's dignity and respect in full recognition of his or her individuality.

(b) *Self-determination and participation.* The participant has the right to—

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care;

(2) Interact with members of the community both inside and outside the program; and

(3) Make choices about aspects of his or her life in the program that are significant to the participant.

(c) *Participant and family concerns.* The program management must document any concerns submitted to the management of the program by participants or family members.

(1) A participant's family has the right to meet with families of other participants in the program.

(2) Staff or visitors may attend participant or family meetings at the group's invitation.

(3) The program management must respond to written requests that result from group meetings.

(4) The program management must listen to the views of any participant or family group and act upon the concerns of participants and families regarding policy and operational decisions affecting participant care in the program.

(d) *Participation in other activities.* A participant has the right to participate in social, religious, and community activities that do not interfere with the rights of other participants in the program.

(e) *Therapeutic participant activities.* (1) The program management must provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well being of each participant.

(2) The activities program must be directed by a qualified professional who is a qualified therapeutic recreation specialist or an activities professional who—

(i) Is licensed, if applicable, by the State in which practicing; and

(ii) Is certified as a therapeutic recreation specialist or an activities professional by a recognized certifying body.

(3) A critical role of the adult day health care program is to build relationships and create a culture that supports, involves, and validates the participant. Therapeutic activity refers to that supportive culture and is a significant aspect of the individualized plan of care. A participant's activity includes everything the individual experiences during the day, not just arranged events. As part of effective therapeutic activity the adult day health care program must:

(i) Provide direction and support for participants, including breaking down activities into small, discrete steps or behaviors, if needed by a participant;

(ii) Have alternative programming available for any participant unable or unwilling to take part in group activity;

(iii) Design activities that promote personal growth and enhance the self-image and/or improve or maintain the functioning level of participants to the extent possible;

(iv) Provide opportunities for a variety of involvement (social, intellectual, cultural, economic, emotional, physical, and spiritual) at different levels, including community activities and events;

(v) Emphasize participants' strengths and abilities rather than impairments and contribute to participant feelings of competence and accomplishment; and

(vi) Provide opportunities to voluntarily perform services for community groups and organizations.

(f) *Social services.* (1) The facility management must provide medically-related social services to participants and their families.

(2) An adult day health care program must employ or contract for a qualified social worker to provide social services.

(3) Qualifications of social worker. A qualified social worker is an individual with—

(i) A bachelor's degree in social work from a school accredited by the Council of Social Work Education (Note: A master's degree social worker with experience in long-term care is preferred);

(ii) A social work license from the State in which the State home is located, if license is offered by the State; and

(iii) A minimum of one year of supervised social work experience in a health care setting working directly with individuals.

(4) The facility management must have sufficient social worker and support staff to meet participant and family social services needs. The adult day health care social services must:

(i) Provide counseling to participants and families/caregivers;

(ii) Facilitate the participant's adaptation to the adult day health care program and active involvement in the plan of care, if appropriate;

(iii) Arrange for services not provided by the adult day health care program and work with these resources to coordinate services;

(iv) Serve as participant advocate by asserting and safeguarding the human and civil rights of the participants;

(v) Assess signs of mental illness and/or dementia and make appropriate referrals;

(vi) Provide information and referral for persons not appropriate for adult day health care program;

(vii) Provide family conferences and serve as liaison between participant, family/caregiver and program staff;

(viii) Provide individual or group counseling and support to caregivers and participants;

(ix) Conduct support groups or facilitate participant or family/caregiver participation in support groups;

(x) Assist program staff in adapting to changes in participants' behavior; and

(xi) Provide or arrange for individual, group, or family psychotherapy for participants' with significant psychosocial needs.

(5) Space for social services must be adequate to ensure privacy for interviews.

(g) *Environment.* The program management must provide—

(1) A safe, clean, comfortable, and homelike environment, and support the participants' ability to function as independently as possible and to engage in program activities;

(2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;

(3) Private storage space for each participant sufficient for a change of clothes;

(4) Interior signs to facilitate participants' ability to move about the facility independently and safely;

(5) A clean bed available for acute illness, when indicated;

(6) A shower for resident's need, when indicated;

(7) Adequate and comfortable lighting levels in all areas;

(8) Comfortable and safe temperature levels; and

(9) Comfortable sound levels.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

**§ 52.110 Participant assessment.**

The program management must conduct initially, semi-annually and as required by a change in the participant's condition a comprehensive, accurate, standardized, reproducible assessment of each participant's functional capacity.

(a) *Intake screening.* An intake screening must be completed to determine the appropriateness of the adult day health care program for each participant.

(b) *Enrollment orders.* The program management must have physician orders for the participant's immediate care and a medical assessment, including a medical history and physical examination, within a time frame appropriate to the participant's condition, not to exceed 72 hours after enrollment, except when an examination was performed within five days before enrollment and the findings were provided and placed in the clinical record on enrollment.

(c) *Comprehensive assessments.* (1) The program management must make a comprehensive assessment of a participant's needs using (on and after January 1, 2002) the Minimum Data Set for Home Care (MSD–HC) Instrument Version 2.0, August 2, 2000.

(2) Frequency. Participant assessments must be completed—

(i) No later than 14 calendar days after the date of enrollment; and

(ii) Promptly after a significant change in the participant's physical, mental, or social condition.

(3) Review of assessments. Program management must review each participant no less than once every six months and as appropriate and revise the participant's assessment to assure the continued accuracy of the assessment.

(4) Use. The results of the assessment are used to develop, review, and revise the participant's individualized comprehensive plan of care, under paragraph (e) of this section.

(d) *Accuracy of assessments.* (1) *Coordination.* (i) Each assessment must be conducted or coordinated with the appropriate participation of health professionals.

(ii) Each assessment must be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment.

(2) *Certification.* Each person who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(e) *Comprehensive care plans.* (1) The program management must develop an individualized comprehensive care plan for each participant that includes measurable objectives and timetables to meet a participant's physical, mental, and psychosocial needs that are identified in the comprehensive assessment. The care plan must describe the following—

(i) The services that are to be provided by the program and by other sources to attain or maintain the participant's highest physical, mental, and psychosocial well-being as required under § 52.120;

(ii) Any services that would otherwise be required under § 52.120 but are not provided due to the participant's exercise of rights under § 52.70, including the right to refuse treatment under § 52.70(b)(4);

(iii) Type and scope of interventions to be provided in order to reach desired, realistic outcomes;

(iv) Roles of participant and family/caregiver; and

(v) Discharge or transition plan, including specific criteria for discharge or transfer.

(2) A comprehensive care plan must be—

(i) Developed within 21 calendar days from the date of the adult day care enrollment and after completion of the comprehensive assessment;

(ii) Assigned to one team member for the accountability of coordinating the completion of the interdisciplinary plan;

(iii) Prepared by an interdisciplinary team that includes the primary physician, a registered nurse with responsibility for the participant, social worker, recreational therapist and other appropriate staff in disciplines as determined by the participant's needs, the participation of the participant, and the participant's family or the participant's legal representative; and

(iv) Periodically reviewed and revised by a team of qualified persons after each assessment.

(3) The services provided or arranged by the facility must—

(i) Meet professional standards of quality; and

(ii) Be provided by qualified persons in accordance with each participant's written plan of care.

(f) *Discharge summary.* Prior to discharging a participant, the program management must prepare a discharge summary that includes—

(1) A recapitulation of the participant's care;

(2) A summary of the participant's status at the time of the discharge to include items in paragraph (c)(2) of this section; and

(3) A discharge/transition plan related to changes in service needs and changes in functional status that prompted another level of care.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

**§ 52.120 Quality of care.**

Each participant must receive, and the program management must provide, the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

(a) *Reporting of sentinel events.* (1) Definition. A *sentinel event* is an adverse event that results in the loss of life or limb or permanent loss of function.

(2) Examples of sentinel events are as follows:

(i) Any participant death, paralysis, coma or other major permanent loss of function associated with a medication error; or

(ii) Any suicide or attempted suicide of a participant, including suicides following elopement (unauthorized departure) from the program; or

(iii) Any elopement of a participant from the program resulting in a death or a major permanent loss of function; or

(iv) Any procedure or clinical intervention, including restraints, that result in death or a major permanent loss of function; or

(v) Assault, homicide or other crime resulting in a participant's death or major permanent loss of function; or

(vi) A participant's fall that results in death or major permanent loss of function as a direct result of the injuries sustained in the fall; or

(vii) A serious injury requiring hospitalization.

(3) The program management must report sentinel events to the director of the VA medical center of jurisdiction within 24 hours of identification. The director of the VA medical center of jurisdiction must report sentinel events

to the VA Network Director (10N1–22), Assistant Deputy Under Secretary for Health (10N), and Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), within 24 hours of identification and/or notification by the State home.

(4) The program management must establish a mechanism to review and analyze a sentinel event resulting in a written report no later than 10 working days following the event. The purpose of the review and analysis of a sentinel event in an adult day health care program is to prevent future injuries to residents, visitors, and personnel.

(b) *Activities of daily living.* Based on the comprehensive assessment of a resident, the program management must ensure that—

(1) A participant's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. This includes the participant's ability to—

(i) Bathe, dress, and groom;

(ii) Transfer and ambulate;

(iii) Toilet; and

(iv) Eat.

(2) A participant is given the appropriate treatment and services to maintain or improve his or her abilities specified in paragraph (b)(1) of this section.

(3) A participant who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, hydration, grooming, personal and oral hygiene, mobility, and bladder and bowel elimination.

(c) *Vision and hearing.* To ensure that participants receive proper treatment and assistive devices to maintain vision and hearing abilities, the program management must, if necessary, assist the participant and family—

(1) In making appointments; and

(2) Arranging for transportation to and from the office of a practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

(d) *Pressure ulcers.* Based on the comprehensive assessment of a participant, the program management must ensure that—

(1) A participant who enters the program without pressure ulcers does not develop pressure ulcers unless the individual's clinical condition demonstrates that they were unavoidable; and

(2) A participant having pressure ulcers receives necessary treatment and services to promote healing, prevent infection and prevent new ulcers from developing.

(e) *Urinary and fecal incontinence.* Based on the participant's comprehensive assessment, the program management must ensure that—

(1) A participant who enters the program without an indwelling catheter is not catheterized unless the participant's clinical condition demonstrates that catheterization was necessary;

(2) A participant who is incontinent of urine receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible; and

(3) A participant who has persistent fecal incontinence receives appropriate treatment and services to treat reversible causes and to restore as much normal bowel function as possible.

(f) *Range of motion.* Based on the comprehensive assessment of a participant, the program management must ensure that—

(1) A participant who enters the program without a limited range of motion does not experience reduction in range of motion unless the participant's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(2) A participant with a limited range of motion receives appropriate treatment and services to increase range of motion and/or to prevent further decrease in range of motion.

(g) *Mental and psychosocial functioning.* Based on the comprehensive assessment of a participant, the program management must ensure that a participant who displays mental or psychosocial adjustment difficulty, receives appropriate treatment and services to correct the assessed problem.

(h) *Accidents.* The program management must ensure that—

(1) The participant environment remains as free of accident hazards as is possible; and

(2) Each participant receives adequate supervision and assistance devices to prevent accidents.

(i) *Nutrition.* Based on a participant's comprehensive assessment, the program management must ensure, by working with the family, that a participant—

(1) Maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the participant's clinical condition demonstrates that this is not possible; and

(2) Receives a therapeutic diet when a nutritional deficiency is identified.

(j) *Hydration.* The program management must provide each participant with sufficient fluid intake during the day to maintain proper hydration and health.

(k) *Unnecessary drugs.* (1) *General.* Each participant's drug regimen must be free from unnecessary drugs. An unnecessary drug is any drug when used:

(i) In excessive dose (including duplicate drug therapy); or

(ii) For excessive duration; or

(iii) Without adequate monitoring; or

(iv) Without adequate indications for its use; or

(v) In the presence of adverse consequences which indicate the dose should be reduced or discontinued; or

(vi) Any combinations of the reasons in paragraphs (k)(1)(i) through (v) of this section.

(2) *Antipsychotic drugs.* Based on a comprehensive assessment of a participant, the program management must ensure that—

(i) Participants who have not used antipsychotic drugs are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition as diagnosed by the primary physician and documented in the clinical record; and

(ii) Participants who use antipsychotic drugs receive gradual dose reductions, and behavioral interventions, unless clinically contraindicated, in an effort to discontinue these drugs.

(l) *Medication errors.* The program management must ensure that—

(1) Medication errors are identified and reviewed on a timely basis; and

(2) Strategies for preventing medication errors and adverse reactions are implemented.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

### § 52.130 Nursing services.

The program management must provide an organized nursing service with a sufficient number of qualified nursing personnel to meet the total nursing care needs, as determined by participant assessment and individualized comprehensive plans of care, of all participants in the program.

(a) There must be at least one registered nurse on duty each day of operation of the adult day health care program. This nurse must be currently licensed by the State and must have, in writing, administrative authority, responsibility, and accountability for the functions, activities, and training of

the nursing and program assistants. VA recommends that this nurse be a geriatric nurse practitioner or a clinical nurse specialist.

(b) The number and level of nursing staff is determined by the authorized capacity of participants and the nursing care needs of the participants.

(c) Nurse staffing must be adequate for meeting the standards of this part.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

**§ 52.140 Dietary services.**

The program management must provide each participant with a nourishing, palatable, well-balanced meal that proportionally meets the daily nutritional and special dietary needs of each participant.

(a) *Food and nutritional services.* The program management provides and/or contracts with a food service entity and provides and/or contracts sufficient support personnel competent to carry out the functions of the food service.

(1) The program management must employ a qualified dietitian either part-time or on a contract consultant basis to provide nutritional guidance.

(2) A qualified dietitian is one who is qualified based upon registration by the Commission on Dietetic Registration of the American Dietetic Association.

(3) The dietitian must—

(i) Conduct participant nutritional assessments and recommend nutritional intervention as appropriate.

(ii) Consult and provide nutrition education to participants, family/caregivers, and program staff as needed.

(iii) Consult and provide education and training to the food service staff.

(iv) Monitor and evaluate participants receiving enteral tube feedings and parenteral line solutions, and recommend changes as appropriate.

(b) *Menus and nutritional adequacy.* (1) The participant's total dietary intake is of concern but is not the adult day health care program's responsibility.

(2) The program is responsible for the meals served in the facility.

(c) *Food.* Each participant receives and the program provides—

(1) Food prepared by methods that conserve nutritive value, flavor, and appearance;

(2) Food that is palatable, attractive, and at the proper temperature;

(3) Food prepared in a form designed to meet individual needs; and

(4) Substitutes offered of similar nutritive value to participants who refuse food served.

(d) *Therapeutic diets.* (1) Therapeutic diets must be prescribed by the primary care physician.

(2) Special, modified, or therapeutic diets must be provided as necessary for participants with medical conditions or functional impairments.

(3) An adult day health care program must not admit nor continue to serve a participant whose dietary requirements cannot be accommodated by the program.

(e) *Frequency of meals.* (1) At regular times comparable to normal mealtimes in the community, each participant may receive and program management must provide at least two meals daily for those veterans staying more than four hours and at least one meal for those staying less than four hours.

(2) The program management must offer snacks and fluids as appropriate to meet the participants' nutritional and fluid needs.

(f) *Assistive devices.* The program management must provide special eating equipment and utensils for participants who need them.

(g) *Sanitary conditions.* The program must—

(1) Procure food from sources approved or considered satisfactory by Federal, State, or local authorities;

(2) Store, prepare, distribute, and serve food under sanitary conditions; and

(3) Dispose of garbage and refuse properly.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

**§ 52.150 Physician services.**

As a condition of enrollment in adult day health care program, a participant must obtain a written physician order for enrollment. Each participant must remain under the care of a physician.

(a) *Physician supervision.* The program management must ensure that—

(1) The medical care of each participant is supervised by a primary care physician;

(2) Each participant's medical record must contain the name of the participant's primary physician; and

(3) Another physician is available to supervise the medical care of participants when their primary physician is unavailable.

(b) *Frequency of physician reviews.* (1) The participant must be seen by the primary physician at least annually and as indicated by a change of condition.

(2) The program management must have a policy to help ensure that adequate medical services are provided to the participant.

(3) At the option of the primary physician, required reviews in the program after the initial review may alternate between personal physician reviews and reviews by a physician assistant, nurse practitioner, or clinical nurse specialist in accordance with paragraph (e) of this section.

(c) *Availability of acute care.* The program management must provide or arrange for the provision of acute care when it is indicated.

(d) *Availability of physicians for emergency care.* In case of an emergency, the program management must provide or arrange for the provision of physician services when the program has participants under its care.

(e) *Physician delegation of tasks.* (1) A primary physician may delegate tasks to:

(i) A certified physician assistant or a certified nurse practitioner, or

(ii) A clinical nurse specialist who—

(A) Is acting within the scope of practice as defined by State law; and

(B) Is under the supervision of the physician.

(2) The primary physician may not delegate a task when the provisions of this part specify that the primary physician must perform it personally, or when the delegation is prohibited under State law or by the facility's own policies.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

**§ 52.160 Specialized rehabilitative services.**

(a) *Provision of services.* If specialized rehabilitative services such as, but not limited to, physical therapy, speech therapy, occupational therapy, and mental health services for mental illness are required in the participant's comprehensive plan of care, program management must—

(1) Provide the required services; or

(2) Obtain the required services and equipment from an outside resource, in accordance with § 52.210(h), from a provider of specialized rehabilitative services.

(b) Specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

**§ 52.170 Dental services.**

(a) Program management must, if necessary, assist the participant and family/caregiver—

(1) In making appointments; and

(2) By arranging for transportation to and from the dental services.

(b) Program management must promptly assist and refer participants with lost or damaged dentures to a dentist.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

**§ 52.180 Administration of drugs.**

The program management must assist with the management of medication and have a system for disseminating drug information to participants and program staff.

(a) *Procedures.* (1) The program management must provide reminders or prompts to participants to initiate and follow though with self-administration of medications.

(2) The program management must establish a system of records to document the administration of drugs by participants and/or staff.

(3) The program management must ensure that drugs and biologicals used by participants are labeled in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration dates when applicable.

(4) The program management must store all drugs, biologicals, and controlled schedule II drugs listed in 21 CFR 1308.12 in locked compartments under proper temperature controls, permit only authorized personnel to have access, and otherwise comply with all applicable State and Federal laws.

(b) *Service consultation.* The program management must employ or contract for the services of a pharmacist licensed in the State in which the program is located who provides consultation, as needed, on all the provision of drugs.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

**§ 52.190 Infection control.**

The program management must establish and maintain an infection control program designed to prevent the development and transmission of disease and infection.

(a) *Infection control program.* The program management must—

(1) Investigate, control, and prevent infections in the program participants and staff; and

(2) Maintain a record of incidents and corrective actions related to infections.

(b) *Preventing spread of infection.* (1) The program management must prevent participants or staff with a communicable disease or infected skin lesions from attending the adult day health care program if direct contact will transmit the disease.

(2) The program management must require staff to wash their hands after each direct participant contact for which hand washing is indicated by accepted professional practice.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

**§ 52.200 Physical environment.**

The physical environment must be designed, constructed, equipped, and maintained to protect the health and safety of participants, personnel and the public.

(a) *Life safety from fire.* The facility must meet the applicable provisions of the National Fire Protection Association's NFPA 101, Life Safety Code, 2000 edition. Incorporation by reference this document was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The document incorporated by reference is available for inspection at the Office of the Federal Register, Suite 700, 800 North Capitol Street, NW, Washington, DC, and the Department of Veterans Affairs, Office of Regulations Management (02D), Room 1154, 810 Vermont Avenue, NW., Washington, DC 20420. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555.)

(b) *Space and equipment.* (1) Program management must—

(i) Provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide participants with needed services as required by these standards and as identified in each participant's plan of care; and

(ii) Maintain all essential mechanical, electrical, and patient care equipment in safe operating condition.

(2) Each adult day health care program, when it is co-located in a nursing home, domiciliary, or other care facility, must have its own separate designated space during operational hours.

(3) The indoor space for an adult day health care program must be at least 100 square feet per participant including office space for staff and must be 60 square feet per participant excluding office space for staff.

(4) Each program will need to design and partition its space to meet its own needs, but a minimal number of functional areas must be available. These include:

(i) A dividable multipurpose room or area for group activities, including dining, with adequate table-setting space.

(ii) Rehabilitation rooms or an area for individual and group treatments for occupational therapy, physical therapy, and other treatment modalities.

(iii) A kitchen area for refrigerated food storage, the preparation of meals and/or training participants in activities of daily living.

(iv) An examination and/or medication room.

(v) A quiet room (with at least one bed), which functions to isolate participants who become ill or disruptive, or who require rest, privacy, or observation, must include a bed. It should be separate from activity areas, near a restroom, and supervised.

(vi) Bathing facilities adequate to facilitate bathing of participants with functional impairments.

(vii) Toilet facilities and bathrooms easily accessible to people with mobility problems, including participants in wheelchairs. There must be at least one toilet for every eight participants. The toilets must be equipped for use by persons with limited mobility, easily accessible from all programs areas, i.e., preferably within 40 feet from that area, designed to allow assistance from one or two staff, and barrier-free.

(viii) Adequate storage space. There should be space to store arts and crafts materials, personal clothing and belongings, wheelchairs, chairs, individual handiwork, and general supplies. Locked cabinets must be provided for files, records, supplies, and medications.

(ix) An individual room for counseling and interviewing participants and family members.

(x) A reception area.

(xi) An outside space that is used for outdoor activities that is safe, accessible to indoor areas, and accessible to those with a disability. This space may include recreational space and garden area. It should be easily supervised by staff.

(c) *Furnishings* must be available for all participants. This must include functional furniture appropriate to the participants' needs. Furnishings must be attractive, comfortable, and homelike, while being sturdy and safe.

(d) *Participant call system.* The coordinator's station must be equipped to receive participant calls through a communication system from—

(1) Clinic rooms; and

(2) Toilet and bathing facilities.

(e) *Other environmental conditions.* The program management must provide

a safe, functional, sanitary, and comfortable environment for the participants, staff and the public. The program management must—

(1) Establish procedures to ensure that water is available to essential areas if there is a loss of normal water supply;

(2) Have adequate outside ventilation by means of windows, or mechanical ventilation, or a combination of the two;

(3) Equip corridors, when available, with firmly-secured handrails on each side; and

(4) Maintain an effective pest control program so that the facility is free of pests and rodents.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

**§ 52.210 Administration.**

An adult day health care program must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well being of each participant.

(a) *Governing body.* (1) The State must have a governing body, or designated person functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the program; and

(2) The governing body or State official with oversight for the program appoints the adult day health care program administrator who is:

(i) A qualified heath care professional experienced in clinical program management and, if required by the State, certified as a Certified Administrator in Adult Day Health Care; and

(ii) Responsible for the operation and management of the program including:

(A) Documentation of current credentials for each licensed independent practitioner employed by the program;

(B) Review of the practitioner's record of experience;

(C) Assessment of whether practitioners with clinical privileges act within the scope of privileges granted; and

(iii) Awareness of local trends in community adult day health care and other services, and participation in area adult day health care organizations.

(b) *Disclosure of State agency and individual responsible for oversight of facility.* The State must give written notice to the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420, at the time of the change, if any of the following change:

(1) The State agency and individual responsible for oversight of a State home facility;

(2) The State adult day health care program administrator; or

(3) The State employee responsible for oversight of the State home adult day health care program if a contractor operates the State program.

(c) *Required information.* The program management must submit the following to the director of the VA medical center of jurisdiction as part of the application for recognition and thereafter as often as necessary to be current:

(1) The copy of the legal and administrative action establishing the State-operated facility (e.g., State laws);

(2) Site plan of facility and surroundings;

(3) Legal title, lease, or other document establishing the right to occupy the facility;

(4) Organizational charts and the operational plan of the adult day health care program;

(5) The number of the staff by category indicating full-time, part-time and minority designation, annually;

(6) The number of adult day health care participants who are veterans and non-veterans, the number of veterans who are minorities and the number of non-veterans who are minorities, annually;

(7) Annual State Fire Marshall's report;

(8) Annual certification from the responsible State home showing compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (VA Form 10–0143A set forth at 38 CFR 58.14);

(9) Annual certification for Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707) (VA Form 10–0143 set forth at 38 CFR 58.15);

(10) Annual certification regarding lobbying in compliance with 31 U.S.C. 1352 (VA Form 10–0144 set forth at 38 CFR 58.16);

(11) Annual certification of compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1) as effectuated in 38 CFR part 18 (VA Form 10–0144A located at 38 CFR 58.17);

(d) *Percentage of veterans.* At least 75 percent of the program participants must be eligible veterans except that the veteran percentage need only be more than 50 percent if the facility was acquired, constructed, or renovated solely with State funds. All non-veteran participants must be veteran-related family members or gold star parents of veterans.

(e) *Management contract facility.* If a program is operated by an entity contracting with the State, the State must assign a State employee to monitor the operations of the facility. The State employee may also monitor other levels of care at a colocated facility, but must monitor the adult day health care facility and any colocated facility on a full-time onsite basis.

(f) *Licensure.* The facility and program management must comply with applicable State and local licensure laws.

(g) *Staff qualifications.* (1) The program management must employ on a full-time, part-time or consultant basis those professionals necessary to carry out the provisions of these requirements. Professional disciplines involved in participant care must include registered nurses, program assistants, physicians, social workers, rehabilitation therapists, dietitians, and therapeutic activity therapists and pharmacists. Other disciplines may be considered depending upon the participant and/or program needs.

(2) Professional staff must be licensed, certified, or registered in accordance with applicable State laws.

(3) The staff-participant ratio must be sufficient in number and skills (at least one staff to 4 to 6 participants) to ensure compliance with the standards of this part. There must be at least two responsible persons (paid staff members) at the adult day health care center at all times when there are two or more participants in attendance.

(4) Persons counted in the staff to participant ratio must spend at least 70 percent of their time in direct service with participants.

(5) All professional team members will serve in the role of case manager for designated participants.

(6) All personnel, paid and volunteer, will be provided appropriate training to maintain the knowledge and skills required for the participant needs.

(h) *Use of outside resources.* (1) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the program management must have that service furnished to participants by a person or agency outside the facility under a written agreement described in paragraph (h)(2) of this section.

(2) Agreements pertaining to services furnished by outside resources must specify in writing that the program management assumes responsibility for—

(i) Obtaining services that meet professional standards and principles that apply to professionals providing services in such a program; and

(ii) The timeliness of the services.

(i) *Medical director.* (1) The program management must provide a primary care physician to serve as medical director and a consultant to the interdisciplinary program team.

(2) The medical director is responsible for:

(i) Participating in establishing policies, procedures, and guidelines to ensure adequate, comprehensive services;

(ii) Directing and coordinating medical care in the program;

(iii) Ensuring continuous physician coverage to handle medical emergencies;

(iv) Participating in managing the environment by reviewing and evaluating incident reports or summaries of incident reports, identifying hazards to health and safety, and making recommendations to the adult day health care program administrator; and

(v) Monitoring employees' health status and advising the program administrator on employee health policies.

(3) The medical director may also provide hands-on assessment and/or treatment if authorized by the participant's primary care provider. In programs where a medical director is available to act as a member of the team and authorizes care, information concerning the care provided must be shared with the primary care physician who continues to provide the ongoing medical care.

(4) The program management must have written procedures for handling medical emergencies. The procedures must include, at least:

(i) Procedures for notification of the family;

(ii) Procedures for transportation arrangements;

(iii) Provision for an escort, if necessary; and

(iv) Procedures for maintaining a portable basic emergency information file for each participant that includes:

(A) Hospital preference;

(B) Physician of record and telephone number;

(C) Emergency contact (family);

(D) Insurance information;

(E) Medications/allergies;

(F) Current diagnosis and history; and

(G) Photograph for participant identification.

(j) *Required training of program assistants.* (1) Program assistants must have a high school diploma, or the equivalent, and must have at least one year of experience in working with adults in a health care setting. Program assistants also must complete the National Adult Day Services Association training course or complete equivalent training.

(2) The program management must not use any individual working in the program as a program assistant whether permanent or not unless:

(i) That individual is competent to provide appropriate services; and

(ii) That individual has completed training or is certified by the National Adult Day Services Association as a certified Program Assistant in Adult Day Services.

(3) Verification. Before allowing an individual to serve as a nurse aide or program assistant, program management must verify that the individual has successfully completed a training and competency evaluation program. Facilities must follow up to ensure that such an individual actually becomes certified, if available in the State.

(4) Multi-State registry verification. Before allowing an individual to serve as a nurse aide or program assistant, program management must seek information from every State registry established under HHS regulations at 42 CFR 483.156 which the facility believes may include information on the individual.

(5) Required retraining. If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.

(6) Regular in-service education. The program management must complete a performance review of every nurse aide or program assistant at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews. The in-service training must—

(i) Be sufficient to ensure the continuing competence of nurse aides or program assistants, but must be no less than 12 hours per year;

(ii) Address areas of weakness as determined in program assistants' performance reviews and address the special needs of participants as determined by the program staff; and

(iii) For program assistants or nurse aides providing services to individuals with cognitive impairments, address the care of the cognitively impaired.

(k) *Proficiency of program assistants.* The program management must ensure that program assistants or nurse aides are able to demonstrate competency in skills and techniques necessary to care for participants' needs, as identified through participant assessments, and described in the plan of care.

(l) *Laboratory and radiology results.* The program management must—

(1) Obtain laboratory or radiology results from the participant's primary physician to support the needs of its participants.

(2) Assist the participant and/or family/caregiver in making transportation arrangements to and from the source of laboratory or radiology services, if the participant needs assistance.

(3) File in the participant's clinical record laboratory or radiology reports that are dated and contain the name and address of the testing laboratory or radiology service.

(m) *Participant records.* (1) The facility management must maintain clinical records on each participant in accordance with accepted professional standards and practices that are—

(i) Complete;

(ii) Accurately documented;

(iii) Readily accessible; and

(iv) Systematically organized.

(2) Clinical records must be retained for—

(i) The period of time required by State law; or

(ii) Five years from the date of discharge if there is no requirement in State law.

(3) The program management must safeguard clinical record information against loss, destruction, or unauthorized use.

(4) The program management must keep confidential all information contained in the participant's records, regardless of the form or storage method of the records, except when release is required by—

(i) Transfer to another health care institution;

(ii) Law;

(iii) A third-party payment contract;

(iv) The participant; or

(v) The participant's legal representative.

(5) The clinical record must contain—

(i) Sufficient information to identify the participant;

(ii) A record of the participant's assessments;

(iii) The plan of care and services provided;

(iv) The results of any pre-enrollment screening conducted by the State; and

(v) Progress notes.

(n) *Quality assessment and assurance.* (1) Program management must maintain a quality improvement program and a quality improvement committee consisting of—

(i) A registered nurse;

(ii) A medical director designated by the program; and

(iii) At least three other members of the program's staff.

(2) The quality improvement committee—

(i) Must implement a quality improvement plan for the evaluation of its operation and services and review and revise annually; and

(ii) Must meet at least quarterly to identify quality of care issues; and

(iii) Must develop and implement appropriate plans of action to correct identified quality deficiencies; and

(iv) Must ensure that identified quality deficiencies are corrected within an established time period.

(3) The VA Under Secretary for Health may not require disclosure of the records of such committee unless such disclosure is related to the compliance with the requirements of this section.

(o) *Disaster and emergency preparedness.* (1) The program management must have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, bomb threats, and missing participants.

(2) The program management must train all employees in emergency procedures when they begin to work in the program, periodically review the procedures with existing staff, and carry out unannounced staff drills using those procedures.

(p) *Transfer procedure.* (1) The program management must have in effect a written transfer procedure that reasonably assures that—

(i) Participants will be transferred from the adult day health care program to the hospital, and ensured of timely admission to the hospital when transfer is medically appropriate as determined by a physician; and

(ii) Medical and other information needed for care and treatment of participants will be exchanged between the institutions.

(2) The transfer must be with a hospital sufficiently close to the adult day health care program to make transfer feasible.

(q) *Compliance with Federal, State, and local laws and professional standards.* The program management must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility. This includes the Single Audit Act of 1984 (31 U.S.C. 7501 et seq.) and the Cash Management Improvement Acts of 1990 and 1992 (31 U.S.C. 3335, 3718, 3720A, 6501, 6503).

(r) *Relationship to other Federal regulations.* In addition to compliance with the regulations set forth in this subpart, the program must meet the applicable provisions of other Federal laws and regulations, including but not limited to, those pertaining to nondiscrimination on the basis of race, color, national origin, handicap, or age (38 CFR part 18); protection of human subjects of research (45 CFR part 46), section 504 of the Rehabilitation Act of 1993 (29 U.S.C. 794); Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707); restrictions regarding lobbying (31 U.S.C. 1352); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1). Although these regulations are not in themselves considered requirements under this part, their violation may result in the termination or suspension of, or the refusal to grant or continue payment with Federal funds.

(s) *Intermingling.* A facility recognized as a State home for providing adult day health care may only provide adult day health care in the areas of the facility recognized as a State home for providing adult day health care.

(t) *VA management of State veterans homes.* Except as specifically provided by statute or regulations, VA employees have no authority regarding the management or control of State homes providing adult day health care.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

**§ 52.220 Transportation.**

Transportation of participants to and from the adult day health care facility must be a component of the overall program.

(a)(1) Except as provided in paragraph (a)(2) of this section, the adult day health care program management must provide or contract for transportation to enable participants, including persons with disabilities, to attend the program and to participate in facility-sponsored outings.

(2) The veteran or the family of a veteran may decline transportation offered by the adult day health care program management and make their own arrangements for the transportation.

(b) The adult day health care program management must have a transportation policy that includes routine and emergency procedures, with a copy of the relevant procedures located in all program vehicles.

(c) All vehicles transporting participants to and from adult day health care must be equipped with a device for two-way communication.

(d) All facility-provided and contracted transportation systems must meet local, State and federal regulations.

(e) The time to transport participant to or from the facility must not be more than 60 minutes except under unusual conditions, e.g., bad weather.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

[FR Doc. 02–150 Filed 1–4–02; 8:45 am]

BILLING CODE 8320–01–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

### Final Flood Elevation Determinations

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

**ACTION:** Final rule.

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

**EFFECTIVE DATE:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

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

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov*.

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

BFEs were also published in the **Federal Register**.

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

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

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

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

**National Environmental Policy Act**

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

**Regulatory Flexibility Act**

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

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

*Executive Order 12778, Civil Justice Reform.* This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 67**

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

Accordingly, 44 CFR Part 67 is amended to read as follows:

## PART 67—[AMENDED]

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

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

**§ 67.11 [Amended]**

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

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **HAWAII** | |
| **Maui County, (FEMA Docket No. B–7421)** | |
| *Unnamed Stream at Kuau Point:* | |
| Approximately 720 feet downstream of Hana Highway | *14 |
| Approximately 750 feet upstream of Hana Highway | *29 |
| **Maps are available for inspection** at the Department of Planning, 250 South High Street, Wailuku, Hawaii. | |
| **WASHINGTON** | |
| **Skokomish Indian Tribe, (FEMA Docket No. B–7421)** | |
| *Skokomish River:* | |
| Just downstream of State Route 106 | *16 |
| Approximately 3,000 feet upstream of U.S. Route 101 | *31 |
| **Maps are available for inspection** at the Natural Resources Office, North 541 Tribal Center Road, Shelton, Washington. | |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) | Communities affected |
|---|---|---|
| **CALIFORNIA** | | |
| **FEMA Docket No. (B–7420)** | | |
| *Alvarado Creek:* | | |
| At Pennsylvania Lane ext., approximately 1,000 feet downstream of 70th street | *379 | City of La Mesa, City of San Diego |
| Approximately 2000 feet downstream of Lake Murray Boulevard | *407 | |
| Approximately 900 feet downstream of Comanche Boulevard | *425 | |
| Approximately 300 feet upstream of Fletcher Parkway | *454 | |
| **ADDRESSES:** City of La Mesa: Maps are available for inspection at the Department of Public Works Community Development, City Hall, 8130 Allison Avenue, La Mesa, California. City of San Diego: Maps are available for inspection at the City Development Services Center, 1222 1st Avenue, 3rd Floor, San Diego, California. | | |
| **NEW MEXICO** | | |
| **FEMA Docket No. (B–7421)** | | |
| *Animas River:* | | |
| Approximately 1,300 feet downstream of Miller Avenue | +5,276 | City of Farmington, San Juan County. |
| Just upstream of Broadway Street | +5,304 | |
| Approximately 4,300 feet upstream of Browning Parkway | +5,361 | |
| *San Juan River:* | | |
| Approximately 8,600 feet downstream of Route 371 | +5,223 | |
| Approximately 2,200 feet downstream of Route 371 | +5,242 | |
| *Wyper Arroyo:* | | |
| Approximately 100 feet upstream of U.S. Highway 550 | +5,499 | |
| Just upstream of confluence of Wyper Arroyo Tributary | +5,559 | |
| Approximately 3,800 feet upstream of confluence of Wyper Arroyo Tributary | +5,668 | |
| *Wyper Arroyo Tributary:* | | |
| Just upstream of confluence of Wyper Arroyo | +5,559 | |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) | Communities affected |
|---|---|---|
| Approximately 3,450 feet upstream of confluence with Wyper Arroyo | +5,662 | |
| *Carl Arroyo:* | | |
| Approximately 1,700 feet downstream of U.S. Route 550 | +5,451 | |
| Just upstream of Winnifred Drive | +5,535 | |
| Approximately 3,900 feet upstream of Winnifred Drive | +5,635 | |
| *Hood Arroyo:* | | |
| Approximately 1,800 feet downstream of Hubbard Street | +5,403 | |
| Just upstream of Pinon Hills Blvd | +5,530 | |
| Approximately 850 feet upstream of Hogan Avenue | +5,714 | |
| *Hood Arroyo Tributary:* | | |
| Just upstream of Hogan Avenue | +5,640 | |
| Approximately 4,200 feet upstream of Hogan Avenue | +5,820 | |
| *Porter Arroyo:* | | |
| Approximately 1,300 feet downstream of Windsor Drive | +5,509 | |
| Just upstream of confluence of Porter Arroyo Tributary C | +5,622 | |
| Approximately 4,200 feet upstream of North College Road | +5,796 | |
| *Porter Arroyo Tributary C:* | | |
| At confluence with Porter Arroyo | +5.620 | |
| Approximately 1,300 feet upstream of confluence with Porter Arroyo | +5,654 | |
| *Porter Arroyo Tributary B:* | | |
| At confluence with Porter Arroyo | +5,645 | |
| Approximately 1,100 feet upstream of confluence with Porter Arroyo | +5,682 | |
| *Porter Arroyo Tributary A:* | | |
| At confluence with Porter Arroyo near North College Road | +5,670 | |
| Approximately 2,100 feet upstream of confluence with Porter Arroyo | +5,752 | |
| *Butler Arroyo:* | | |
| Just upstream of 30th Street | +5,508 | |
| Approximately 4,000 feet upstream of 30th Street | +5,606 | |
| *Dustin Arroyo:* | | |
| Approximately 400 feet downstream of 30th Street | +5,489 | |
| Approximately 700 feet upstream of Cerrillos Drive | +5,667 | |
| *Farmers Mutual Ditch:* | | |
| Approximately 300 feet downstream of Westland Park Drive | +5,227 | |
| Approximately 1,500 feet upstream of Westland Park Drive, near its divergence from San Juan River. | +5,236 | |
| *Westland Park Drive Runoff:* | | |
| Approximately 800 feet downstream of Westland Park Drive | +5,225 | |
| Approximately 150 feet upstream of Westland Park Drive | +5,235 | |

**ADDRESSES:**
City of Farmington:
Maps are available for inspection at City Hall, 800 Municipal Drive, Farmington, New Mexico.
San Juan County:
Maps are available for inspection at the Office of Building Inspector, 100 South Oliver, Aztec, New Mexico.

| **OREGON** | | |
|---|---|---|
| **FEMA Docket No. (B–7421)** | | |
| *Wagner Creek:* | | |
| Just upstream of Rapp Road | *1,654 | Jackson County |
| Approximately 1,100 feet upstream of a Private Culvert in the Stream Valley just south of the junction of Ashland Mine Road and Wagner Creek Road. | *2,201 | |
| At confluence with Bear Creek | *1,562 | City of Talent |
| Just upstream of Rouge Valley Highway 99 | *1,593 | |
| Just downstream of Rapp Road | *1,652 | |

**ADDRESSES:**
Jackson County:
Maps are available for inspection at the Roads, Parks and Planning Services, 10 South Oakdale Avenue, Medford, Oregon.
City of Talent:
Maps are available for inspection at City Hall, 204 East Main Street, Talent Oregon.

| **UTAH** | | |
|---|---|---|
| **FEMA Docket No. (B–7420)** | | |
| *Willow Creek (West):* | | |
| Just upstream of 11400 South Street | *4,362 | City of Draper |
| Approximately 100 feet upstream of 12300 South Street | *4,409 | |
| Approximately 1,250 feet upstream of 150 East Road | *4,441 | |
| | *2,201 | |
| *Midas Creek:* | | |
| At confluence with Jordan River | *4,322 | Salt Lake County. |
| Approximately 250 feet upstream of 3600 West Street | *4,603 | (Uninc. Areas), City of Riverton, City of South Jordan |

**ADDRESSES:**

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) | Communities affected |
|---|---|---|
| Salt Lake County (Unincorporated. Areas):<br>Maps are available for inspection at 2001 South State Street, Suite N3300, Salt Lake City, Utah.<br>City of Draper:<br>Maps are available for inspection at the Engineer Department, 12441 South 900 East, Draper, Utah.<br>City of Riverton:<br>Maps are available for inspection at City Hall, 949 East 12400 South Street, Riverton, Utah.<br>City of South Jordan:<br>Maps are available for inspection at 10996 South Redwood Road, South Jordan, Utah. | | |

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

Dated: December 19, 2001.

**Robert F. Shea,**

*Acting Administrator, Federal Insurance and Mitigation Administration.*

[FR Doc. 02–321 Filed 1–4–02; 8:45 am]

**BILLING CODE 6718–04–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 6 and 7

**[WT Docket No. 96–198; DA 01–2730]**

### Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons With Disabilities

**AGENCY:** Federal Communications Commission.

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

**SUMMARY:** This document announces the deadline by which providers of telecommunications services and manufacturers of telecommunications equipment and customer premises equipment must provide the Commission with the designation of an agent on whom service may be made of all notices, inquiries, orders, decisions, and other pronouncements of the Commission. Each provider and manufacturer must inform the Commission of its designation of an agent by January 31, 2002. The designation must include the agent's name or department designation, business address, telephone number, TTY number (if available), facsimile number, and Internet e-mail address.

**DATES:** The amendment to 47 CFR Part 6.18 and 7.18 published at 64 FR 63235 (November 19, 1999) will become effective January 31, 2002.

**FOR FURTHER INFORMATION CONTACT:** Jenifer Simpson (202) 418–0008 (voice), (202) 418–0034 (TTY) or Dana Jackson (202) 418–2247 (voice), (202) 418–7898 (TTY), Disabilities Rights Office, Consumer Information Bureau.

**SUPPLEMENTARY INFORMATION:** This designation of agent must be filed with the Commission's Secretary, Magalie Salas, Office of the Secretary, 445 12th Street, SW, Room TW–A325, Washington, DC, 20554. An additional copy should be sent to the Disabilities Rights Office, Consumer Information Bureau, Room 5–A741, 445 12th Street, SW, Washington, DC, 20554, Attn: Dana Jackson. We intend to continue posting the required information on the FCC's web site within the Consumer Information Bureau (CIB) and administering the posting within CIB's Disabilities Rights Office. Contact information for manufacturers is posted at *http://www.fcc.gov/cib/dro/section255_manu.html;* contact information for service providers is posted at *http://www.fcc.gov/cib/dro/service_providers.html;* and contact information for affected colleges and universities is posted at *http://www.fcc.gov/cib/dro/section255_colleges.html.*

This document is available to individuals with disabilities requiring accessible formats (electronic ASCII text, Braille, large print and audio) by contacting Brian Millin at (202) 418–7426 (voice), (202) 418–7365 (TTY), or by sending an email to fccinfo@fcc.gov.

On September 29, 1999, the Commission released a Report and Order and Further Notice of Inquiry (RO/FNOI) adopting a framework for implementing Section 255 of the Communications Act of 1934, as amended, which requires telecommunications equipment manufacturers and service providers to ensure that their equipment and services are accessible to persons with disabilities, to the extent that it is readily achievable to do so. A summary of this RO/FNOI was published in the **Federal Register**. See 64 FR 63277; 64 FR 63235.

Among the new rules is a requirement that equipment manufacturers and service providers each designate an agent for service of informal and formal complaints received by the Commission. This rule entails information collection requirements, and in the RO/FNOI, the Commission stated that ''some of the information collection requirements in this Report and Order are contingent on approval by OMB,'' including the designation of agent requirement. The information collection was approved by OMB on October 29, 2001. See OMB No. 3060–0833. This publication announces the effective date of the Commission's requirement that equipment manufacturers and service providers subject to the requirements of Section 255 of the Act designate an agent upon whom service may be made of all notices, inquiries, orders, decisions, and other pronouncements of the Commission in any matter before the Commission. The designation shall include, for both the manufacturer and the provider, a name or department designation, business address, telephone number, and if available, TTY number, facsimile number, and Internet e-mail address. More information on this subject can be found in the Commission's Public Notice, DA 01–2730, released December 19, 2001.

Federal Communications Commission.

**Thomas D. Wyatt,**

*Associate Chief (Operations), Consumer Information Bureau.*

[FR Doc. 01–32243 Filed 1–4–02; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

**[CS Docket No. 96–40; FCC 01–340]**

### Repeal of the Scrambling of Sexually Explicit Adult Video Service Programming Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission has repealed a section of its multichannel video and cable television

service rules dealing with the blocking of indecent sexually-oriented programming channels because the underlying statutory provision, 47 U.S.C. 561, was struck down as unconstitutional under the First Amendment.

**DATES:** Effective January 7, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ben Golant, Cable Services Bureau, at 202–418–7111.

**SUPPLEMENTARY INFORMATION:**

1. By this Order, released November 21, 2001, we repeal § 76.227 of the Commission's rules because the underlying statutory provision, section 641 of the Communications Act of 1934, as amended (47 U.S.C. 561), was found to be unconstitutional by the United States Supreme Court. These actions finalize the staff recommendations considered by the Commission earlier this year in the 2000 Biennial Regulatory Review.

2. Section 641 requires that any multichannel video programming distributor, including any cable television operator, ''providing sexually explicit adult programming or other programming that is indecent on any channel of its service primarily dedicated to sexually-oriented programming'' either ''fully scramble or otherwise fully block the video and audio portion of such channel so that one not a subscriber to such channel of programming does not receive it,'' or, alternatively, not provide that programming ''during the hours of the day (as determined by the [Federal Communications] Commission) when a significant number of children are likely to view it.'' The provision addressed concerns regarding ''signal bleed'' of channels that are devoted to sexually explicit adult programming. Signal bleed may occur when a multichannel video program distributor partially scrambles or otherwise partially blocks the signal on sexually explicit channels in an effort to prevent clear reception for those subscribers that do not pay for such channels. When sexually explicit material is offered on an analog service tier, some images and sounds may be clearly identifiable if the scrambling technology is inadequate.

3. Section 640 of the Communications Act, a companion to section 641, also was enacted as part of the Telecommunications Act of 1996. Section 640 provides that, ''upon request by a cable service subscriber, a cable operator shall, without charge, fully scramble or otherwise fully block the audio and video programming of each channel carrying such programming so that one not a subscriber does not receive it.'' One important difference between section 641 and section 640 is that the operator has a mandatory obligation to block programming to all households under section 641, rather than to individual households as provided in section 640. Further, section 640 applies only to cable operators while section 641 applies to all multichannel video programming distributors (''MVPDs''), including satellite carriers and open video system operators.

4. On March 5, 1996 (61 FR 9648, March 11, 1996), the Commission issued an Order to implement the new statutory language of section 641. At that time, the Commission adopted a rule incorporating section 641(a). The Commission also established an interim rule implementing section 641(b), providing that the programming described in subsection (a) may not be provided between the hours of 6 a.m. and 10 p.m. if not fully scrambled or fully blocked. The Commission did not address section 640 in that proceeding.

5. In 1996, Playboy Entertainment Group (''Playboy'') brought suit against the government asserting that section 641 was unconstitutional under the First Amendment. A three judge district court panel agreed with Playboy, finding that section 641 was not the least restrictive means to advance the government's interest in protecting children from exposure to sexually-related material. Indeed, the district court concluded that section 640 provides a less restrictive alternative means to protect those who wish to block out unwanted programming. On that basis, the district court issued a permanent injunction barring enforcement of section 641.

6. On direct appeal by the government, the Supreme Court ruled that the scrambling, blocking, and time shifting requirements of section 641, implemented by the Commission, violate the First Amendment. The Court concluded that section 641 was not the least restrictive means to protect individuals from exposure to sexually explicit programming. The Court held that compliance with the scrambling limitation of section 641 silenced ''protected speech for two-thirds of the day in every home in a cable service area, regardless of the presence or likely presence of children or of the wishes of the viewer.'' Like the district court below, the Court concluded that section 640 provides a less restrictive method for protecting children from exposure to explicit materials. The Court further found that the government failed to show that the alternative protection under section 640 would be so ineffective as to justify the more restrictive requirements of section 641.

7. Given the Court's decision regarding the unconstitutionality of the underlying statutory provision, we hereby repeal § 76.227 of our rules. We undertake these ministerial actions without the issuance of a Further Notice of Proposed Rulemaking because we believe that a further proceeding is unnecessary in light of the Supreme Court's decision in *Playboy* v. *FCC.*

8. We note that parents and others concerned about the availability of partially scrambled sexual content may rely on advances in technology to secure their households from undesirable programming. Specifically, we note that the phenomenon of signal bleed is present generally where the cable wire is directly connected to the television receiver. Signal bleed is circumvented when addressable analog set top boxes or digital set top boxes are connected to the set.

9. The Act provides several legal remedies, working in tandem with available technology, for those who object to certain content made available over a cable system. First, as section 640 requires, a cable operator must block programming, using any means, if such a request is made by a particular subscriber. Second, a cable subscriber may obtain a lock-box from the local cable operator if he or she wants to selectively block unwanted material. Finally, subscribers may purchase television sets equipped with V-Chips that enable individuals to block television programs, including sexually explicit content, assigned a particular rating by the video programmer.

10. Accordingly, IT IS ORDERED that § 76.227 of the Commission's rules IS REPEALED upon publication of this Order in the **Federal Register**.

11. IT IS FURTHER ORDERED that the Commission's rules ARE AMENDED as set forth in the rule changes.

12. These actions are taken pursuant to sections 4(i), 4(j) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303.

**List of Subjects in 47 CFR Part 76**

Cable television.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

## PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 is revised to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

**§ 76.227 [Removed and Reserved]**

2. Section 76.227 is removed and reserved.

[FR Doc. 02–332 Filed 1–4–02; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AH80**

## Endangered and Threatened Wildlife and Plants; Manatee Protection Areas in Florida

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), take final action to establish two additional manatee protection areas in Florida. This action is authorized under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407) (MMPA), to further recovery of the Florida manatee (*Trichechus manatus latirostris*) through a reduction in the level of take. In evaluating the need for additional manatee protection areas, we considered the needs of the manatee at an ecosystem level with the goal of ensuring that adequate protected areas are available throughout peninsular Florida to satisfy the biological requirements of the species, with a view toward the manatee's recovery. We are establishing two manatee refuges in Brevard County, in which certain waterborne activities will be restricted. These two sites are located within the water bodies commonly known as the Barge Canal and Sykes Creek. Watercraft operating within these water bodies will be required to proceed at ''slow speed'' throughout the year.

**DATES:** These designations will become effective upon the posting of appropriate signage designating the boundaries of the manatee protection areas and restrictions on watercraft operating within those boundaries. Such posting will not occur sooner than February 6, 2002.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Jacksonville Field Office, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.

**FOR FURTHER INFORMATION CONTACT:** David Hankla, Peter Benjamin, or Cameron Shaw (see **ADDRESSES** section), telephone 904/232–2580; or visit our website at *http://northflorida.fws.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background

The Florida manatee is Federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001) and is also federally protected under the MMPA (16 U.S.C. 1361–1407). It resides in freshwater, brackish, and marine habitats of coastal and inland waterways in the southeastern United States. The majority of this population resides in the waters of the State of Florida throughout the year, and nearly all manatees use the waters of peninsular Florida during the winter months. The manatee is a cold-intolerant species and requires warm waters (above 20 degrees Celsius (68 degrees Fahrenheit)) to survive during periods of cold weather. During the winter months many manatees rely on the warm water from natural springs and industrial outfalls for warmth. During the summer months they expand their range and are seen rarely as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

Recent information indicates that the overall manatee population has grown since the species was listed (U.S. Fish and Wildlife Service 2001). However, in order for us to determine that an endangered species has recovered to a point that it warrants removal from the List of Endangered and Threatened Wildlife and Plants, the species must have improved in status to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA. That is, threats to the species that caused it to be listed must be reduced or eliminated such that the species no longer fits the definitions of threatened or endangered. While indications of increasing population size are very encouraging, there is no indication that important threats to the species, including human-related mortality and harassment, have been effectively reduced or eliminated.

Human activities, particularly waterborne activities, are resulting in the take of manatees. Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm means an act which actually kills or injures wildlife (50 CFR 17.3). Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding or sheltering (50 CFR 17.3).

The MMPA sets a general moratorium, with certain exceptions, on the taking and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Harassment is defined under the MMPA as any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Human use of the waters of the southeastern United States has increased dramatically as a function of residential growth and increased visitation. This phenomenon is particularly evident in the State of Florida. The population of Florida has grown by 124 percent since 1970 (6.8 million to 15.2 million, U.S. Census Bureau) and is expected to exceed 18 million by 2010, and 20 million by the year 2020. According to a recent report by the Florida Office of Economic and Demographic Research (2000), it is expected that, by the year 2010, 13.7 million people will reside in the 35 coastal counties of Florida. In a parallel fashion to residential growth, visitation to Florida has increased dramatically. It is expected that Florida will have 83 million visitors annually by the year 2020, up from 48.7 million visitors in 1998. In concert with this increase of

human population growth and visitation is the increase in the number of watercraft which ply Florida waters. In 1999, 829,971 vessels were registered in the State of Florida. This is an increase in registered vessels of almost 20 percent since 1993 (Florida Fish and Wildlife Conservation Commission 2000). During this same period, the number of watercraft-related manatee mortalities has increased by 144 percent, from 35 to 82 deaths per year. The Florida Department of Community Affairs estimates that, in addition to boats belonging to Florida residents, between 300,000 and 400,000 boats registered in other States use Florida waters each year.

The large increase in human use of waters inhabited by manatees has had direct and indirect impacts on this endangered species. Direct impacts include injuries and death from vessel impacts, deaths and injuries from water control structure operations, lethal and sub-lethal entanglements with commercial and recreational fishing gear, and alterations of behavior due to harassment. Indirect impacts include habitat destruction and alteration, decreases in water quality throughout some aquatic habitats, decreases in quantity of warm water at natural sites, marine debris, and general disturbance from human activities.

Over the past 10 years, more than 62 percent of watercraft-related manatee mortality has taken place in seven Florida counties (Duval, Volusia, and Brevard, on the east coast; and Collier, Lee, Charlotte, and Hillsborough on the west coast) (U.S. Fish and Wildlife Service 2001). Manatee mortality has continued to climb steadily. Average annual mortality in the 1990s (227.9) was nearly twice that of the 1980s (118.2), and this trend continued in 2000, when 273 dead manatees were recorded. Total mortalities over the past 4 years have averaged 45 percent higher than in the early 1990s. When the record high total of 1996 is added (the year in which the red tide die-off inflated total mortality to 416 animals), average annual mortality over the past 5 years has been nearly 60 percent greater than in the early 1990s (Marine Mammal Commission 2001).

The continuing increase in the number of recovered dead manatees throughout Florida has been interpreted as evidence of increasing mortality rates (Ackerman *et al.* 1995). Between 1976 and 1999, the number of carcasses collected in Florida increased at a rate of 5.8 percent per year, and deaths caused by watercraft strikes increased by 7.2 percent per year (U.S. Fish and Wildlife Service 2001). Because the manatee has a low reproductive rate, a decrease in adult survivorship due to watercraft collisions could contribute to a long-term population decline (O'Shea *et al.* 1985). It is believed that a 1 percent change in adult survival likely results in a corresponding change in the rate of population growth or decline (Marmontel *et al.* 1997).

Collisions with watercraft are the largest source of human-related manatee deaths. Data collected during manatee carcass salvage operations in Florida indicate that a total of 979 manatees (from a total carcass count of 4,021) are confirmed victims of collisions with watercraft since 1976. This number may not accurately represent the actual number of watercraft-related mortalities since many of the mortalities listed as ''undetermined causes'' show evidence of collisions with vessels. Collisions with watercraft comprise approximately 24 percent of all manatee mortalities since 1976. The last 5 years have been record years for the number of watercraft-related mortalities, and watercraft-related deaths have become a larger proportion of total mortality. Since 1998, watercraft-related deaths have represented about 30 percent of all mortality, a 5 percent increase compared to the early 1990s. During the 1980s and 1990s the manatee population apparently grew; however, if population growth rate levels off and manatee mortality continues to increase, a decline in abundance is inevitable (Marine Mammal Commission 2001).

The second largest cause of human-related manatee mortality is entrapment in water control structures and navigation locks (U.S. Fish and Wildlife Service 2001). Manatees may be crushed in gates and locks or may be trapped in openings where flows prevent them from surfacing to breathe. Locks and gates were responsible for 159 manatee deaths between 1976 and 1999 (U.S. Fish and Wildlife Service 2000). While there are no well-defined patterns characterizing these mortalities, it is believed that periods of low rainfall increase the likelihood of manatees being killed in these structures. These periods require more frequent, large-scale movements of water, which require more frequent gate openings and closings in areas that attract manatees searching for fresh water.

Manatees are also affected by other human-related activities. Impacts resulting from these activities include death caused by entrapment in pipes and culverts; entanglement in ropes, lines, and nets; ingestion of fishing gear or debris; vandalism; and poaching. These activities have accounted for 106 manatee deaths since 1976, an average of 4 deaths per year. As with watercraft-related mortalities, other human-related deaths also appear to be increasing, with 31 deaths, approximately 3 percent of the total mortalities, recorded between 1997 and 2000 attributed to these sources. This is an average of 7.75 deaths per year over the last 4 years attributable to other human-related activities.

Harassment of manatees is a concern, particularly when it impedes the use of warm water areas critical to manatee survival during periods of cold weather. In particular, an increasing number of swimmers and divers are visiting Florida's waters to view and swim with the manatees. The presence of large numbers of people and the resultant disturbance has been documented to cause manatees to leave warm water areas (Jay Gorzaleny, Mote Marine Laboratory, personal communication 2001). On occasion, divers and swimmers have been observed attempting to pet, chase, ride, and even sit on manatees. This type of harassment may cause the manatee to leave warmer water to find relief from the harassment in colder areas where there are fewer people. Such responses, if they are instigated by human harassment, are considered take under the ESA and MMPA.

In response to these problems and the watercraft-related impacts in particular, conservation agencies, such as the Service and the Florida Fish and Wildlife Conservation Commission (FWC), have increased their emphasis on enforcement and compliance with manatee speed zones by adding new officers, conducting enforcement task force initiatives, increasing overtime, and increasing the proportion of law enforcement time devoted to manatee conservation. We are also continuing to evaluate development proposals that would increase watercraft traffic in manatee habitats where speed zones, signage, and enforcement are insufficient. To further address the negative effects of human actions on manatees, we are establishing two additional manatee refuges in Florida.

The authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA, and is codified in 50 CFR part 17, subpart J. We may, by regulation, establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees.

We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR

17.102, is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to a taking by harassment. A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to a taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and SCUBA diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredging and filling activities.

Throughout the development of this rule, many commenters cited the increase in the overall size of the manatee population as evidence that the establishment of additional manatee protection areas is not needed. Recent data regarding the size of the manatee population are very encouraging, and indicate that local, State, and Federal efforts to recover the manatee are working. However, we remain concerned that waterborne activities are resulting in take of manatees, which is not allowed under the ESA and MMPA, and which may slow or even impede further recovery. Our obligation under the ESA and MMPA is to further manatee recovery, so that we may someday achieve our goal of removing the species from the List of Endangered and Threatened Wildlife and Plants. This includes using available tools, as practicable, to reduce the level of human-related manatee mortality. The establishment of manatee protection areas is one such tool. We are pursuing other complementary tools simultaneously, as described in the next two sections.

**Synopsis of Manatee Lawsuit Settlement**

In *Save the Manatee Club, et al. v. Ballard, et al*, Civil No. 00–00076 EGS (D.D.C.), several organizations and individuals filed suit against the Fish and Wildlife Service and the U.S. Army Corps of Engineers (Corps) alleging violations of the Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), National Environmental Policy Act (NEPA), and Administrative Procedure Act (APA). Four groups representing development and boating interests intervened. Following extensive negotiations, a Settlement Agreement was approved by the court on January 5, 2001. Under the terms of the settlement, we agreed to the following:

• Submit a proposed rule for new refuges and sanctuaries to the **Federal Register** by April 2, 2001, and submit a final rule by September 28, 2001. Subsequent to the Federal settlement, the FWC also voted to settle *Save the Manatee v. Egbert*, Case No. 90–00–400CIV17–WS (N.D.Fla) (the State case). That settlement, which was entered by the court on November 7, 2001, calls for very similar protective measures in many of the locations included in our proposed rule. As a result of these simultaneous processes, the parties in the Federal lawsuit agreed to extend the April 2 deadline in an attempt to negotiate a means to avoid duplication of effort and better serve the public. Subsequent negotiations resulted in additional extensions, which resulted in the proposed rule being submitted to the **Federal Register** on August 3, 2001. We also agreed to evaluate the propriety of invocation of our emergency sanctuary/refuge designation authority. We published an advance notice of proposed rule-making in the **Federal Register** on September 1, 2000, and held a series of six public workshops in December 2000. We received 1,752 comments in response to the advance notice, and 396 people attended the public workshops. The proposed rule was published in the **Federal Register** on August 10, 2001 (66 FR 42318). A 60-day comment period followed this publication. In addition, we held four public hearings in September 2001, to provide the public an opportunity to comment. We held these hearings in Crystal River, Clearwater, Venice, and Melbourne, Florida. As a result of both the public hearings and written submissions, we received approximately 3,500 comments. These comments are summarized and responded to in the ''Summary of Comments and Recommendations'' section of this rule.

• Revise the Manatee Recovery Plan. We were required, by December 1, 2000, to make a draft revised Recovery Plan available for public review and comment, and to circulate our final revised Recovery Plan for signature no later than February 28, 2001. We published a draft revised Recovery Plan on November 30, 2000, and received over 500 comments. The Plaintiffs and Interveners agreed to new dates for development of a second draft and finalization of the Recovery Plan. As a result of the comments, we made substantial revisions to the Recovery Plan and subsequently issued a second draft for public review and comment on July 10, 2001. The Recovery Plan was finalized on October 30, 2001.

• Pursue a rulemaking proceeding to adopt incidental take regulations under the MMPA. By March 6, 2001, we were required to submit to the **Federal Register** an advance notice of proposed rulemaking; invite by letter the Corps and other entities that conduct activities which may influence factors relating to effects of watercraft on manatees to participate in the MMPA rulemaking process; and promptly provide copies of the **Federal Register** notice and invitation letters to the Plaintiffs and Interveners. The advance notice was published in the **Federal Register** on March 12, 2001, and copies of the advance notice and invitation letters were mailed to the Plaintiffs and Interveners on March 6, 2001. We will determine if any anticipated take by entities participating in the rulemaking process meets the requirements set forth in section 101(a)(5) of the MMPA, 16 U.S.C. 1371(a)(5). The process should result in—(1) if the requirements set forth in section 101(a)(5) of the MMPA are deemed satisfied, a proposed and final MMPA incidental take regulation; (2) preparation of appropriate NEPA documentation which will identify and assess the direct, indirect, and cumulative effects of the overall MMPA regulation (either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS)); (3) detailed assessments of agency programs, including cumulative effects on manatees and their habitat, for any activities covered under the regulation; and (4) consultation pursuant to section 7 of the ESA. We have determined that we will prepare an EIS in association with this action. Draft and final products are due on November 5, 2002, and May 5, 2003, respectively. If the requirements of the MMPA cannot be met, we must notify the Plaintiffs and Interveners as soon as practicable, and publish a negative finding in the **Federal Register** with the basis for denying the request. We must publish our negative finding by May 5, 2003. We will conduct public hearings on draft proposals as appropriate.

• By March 6, 2001, furnish Plaintiffs and Interveners with a letter describing how we will spend increased enforcement resources in FY 2001. This letter was sent on March 6, 2001.

• Revise, and make available for public review, our ''interim guidance'' for addressing potential manatee impacts associated with development and permitting of new watercraft access facilities. We were required to submit this document by March 6, 2001. The revised document appeared in the **Federal Register** on March 14, 2001 (66 FR 14924–32). We agreed to provide at

least thirty (30) days of public comment and actually provided sixty (60) days comment on the revised draft guidance. The final decision on the guidance was released to the public on August 13, 2001, and published in the **Federal Register** on August 21, 2001 (66 FR 43885).

• Provide written progress reports on the status of tasks agreed upon in the settlement agreement every 6 months. The first report was due and was provided to the parties on July 5, 2001.

• Provide copies of concurrence and non-concurrence letters to Plaintiffs and Interveners. Whenever we send a letter to the Corps in response to the Corps' determination that a project ''may affect'' the manatee or ''may affect but is not likely to adversely affect'' the manatee, we are required to concurrently make a copy of the correspondence available to the Plaintiffs and Interveners. This obligation may be satisfied by establishing a web-based system or by transmitting a copy of the letter by U.S. mail or electronically. Until such time as we establish a web-based system, we will forward copies by U.S. mail. These letters have been provided accordingly.

• Provide copies of Biological Opinions (BO). Whenever we issue a final BO regarding the effect of a particular project on manatees or manatee critical habitat, we are required to concurrently make a copy of that opinion available to the Plaintiffs and Interveners. This obligation may be satisfied by establishing a web-based system or by transmitting a copy of the opinion by U.S. mail or electronically. Until such time as we establish a web-based system, we will forward copies by U.S. mail. These biological opinions have been provided accordingly.

**Coordination With State Actions**

A network of manatee speed zones and sanctuaries has been established throughout peninsular Florida by Federal, State, and local governments. This existing structure works toward our goal of providing adequate protected areas throughout peninsular Florida to satisfy the biological requirements of the species. The purpose of our current evaluation is to identify gaps in the existing network and to propose appropriate measures for filling those gaps. We have focused the current action on those sites in which we have determined that Federal action can effectively address the needs in the particular area.

We recognize that the existing system of speed zones and sanctuaries has been established primarily by State and local governments. We also recognize the important role of our State and local partners, and we continue to support and encourage State and local measures to improve manatee protection.

The sites contained in the proposed rule were selected based on the criteria described below, prior to the disclosure of terms of the proposed settlement in the State case. That settlement contains a list of sites that the FWC will be evaluating for potential State designation of speed zones and sanctuaries. There is considerable overlap in terms of sites identified in that settlement and the sites discussed in our proposed rule. The fact that the State's list of sites is more expansive than the list in our proposed rule does not indicate a determination on our part that sites on the State's list, and not proposed by us, do not warrant designation, but is rather a reflection of our focusing on sites for which we believe we can provide the most effective protection for manatees, given our staffing and funding limitations.

We have been coordinating closely with the FWC, since the terms of their proposed settlement were disclosed, to determine which sites are most appropriate for State designation and which are better suited for Federal designation. At the time our proposed rule was prepared, final agreement had not been reached on the terms of the proposed State settlement. Pursuant to the terms of our settlement agreement described previously we were required to submit our proposed rule to the **Federal Register** by April 2, 2001, which was prior to the time in which the FWC made a final decision regarding sites they intend to evaluate. As stated previously, the deadline was extended on several occasions by agreement of the parties in an attempt to negotiate a means to avoid duplication of effort and better serve the public. Alternatives to the proposed rule were rejected by the Plaintiffs, as were requests for further extensions; therefore, considerable overlap is possible between our proposal and potential State action.

We strongly believe that the State should have leadership in establishing additional manatee protection areas. However, we also must meet our settlement obligations. Therefore, we will continue to participate in the State's evaluation. If the State adopts identical or comparable manatee protection measures to the ones we adopt, we will assess whether withdrawing Federal designations is appropriate. We will also continue to evaluate the other 14 proposed sites not currently included in this final rule, and will consider foregoing Federal designations if appropriate measures are adopted by the State or local governments. Additionally, we will continue to monitor other sites that may warrant additional protection. If we identify additional areas in need of protection, we will work with the State to establish necessary protection or may propose actions in the future, as appropriate.

Given that reducing watercraft-related manatee mortality is important to the recovery of the species, and given continuing watercraft-related mortality in Brevard County, we have decided to proceed with final designation of the Barge Canal and Sykes Creek sites. The remaining 14 sites in the proposed rule are somewhat less urgently in need of regulation than the Barge Canal and Sykes Creek sites. Therefore, we are deferring final rulemaking on these sites until December 1, 2002. At that time, if we determine that designation is warranted for the remaining 14 sites, and if the State has been unable to complete rulemaking on those sites, we intend to proceed with final rulemaking on those sites.

**Site Selection Process and Criteria**

In preparation for this action, we met with representatives from local, State, and Federal agencies and organizations involved in manatee research, management, and law enforcement. These meetings helped us to develop a list of sites throughout Florida and southeast Georgia that manatee experts believed should be considered for possible designation as manatee protection areas.

As mentioned above, we published an advance notice of proposed rulemaking in the **Federal Register** on September 1, 2000 (65 FR 53222). The purpose of the advance notice was to inform the public that we were initiating the process of investigating areas for possible designation as manatee protection areas, and to solicit initial public input. We received 1,752 responses to the advance notice. Of these, 1,737 supported our efforts to establish additional manatee protection areas, and 13 opposed them. The remaining two comments did not state a specific opinion.

We also conducted six public workshops throughout peninsular Florida to present the list of potential sites and to solicit public input. A total of 396 people attended the workshops, and 166 provided either oral or written comments. Of these, 79 were general in nature, either supporting our efforts to establish additional manatee protection areas (40) or opposing them (39). An additional 36 comments were not specific to the topic or discussed other

items. Fifteen commenters provided specific information or comments, including recommendations to increase enforcement, increase education, use new technology including satellite tracking of manatees, and other rule-related topics. Of the remaining comments, 28 specifically opposed and 8 specifically supported the establishment of additional manatee protection areas.

We selected sites for inclusion in the proposed rule from the list of sites developed through the preliminary meetings and the information gathered at the public workshops and in response to the advance notice. We based site selection on four factors: (1) Evidence that the site is used by manatees; (2) historic evidence of take (harm or harassment) of manatees at the site due to waterborne human activities; (3) the potential for additional take based on manatee and human use of the site; and (4) a determination that we could implement effective measures at the site to address the identified problem.

In documenting manatee use and historic manatee harm and harassment, we relied on the best available data including aerial survey data, manatee mortality data, and information from the Florida Marine Research Institute, Pathobiology Laboratory, and other information from State and Federal sources. These data were supplemented with information from manatee experts and the public, and our best professional judgment. In determining the potential effectiveness of our proposed actions, we considered the costs of managing and enforcing sites versus the benefits to manatee conservation. Costs associated with site management include installation and maintenance of appropriate signage, public education, and enforcement. In addition, designation of sanctuaries in the waters bordered by private property would entail additional administrative burdens in terms of identifying and providing access to affected residents. We considered these administrative burdens in selecting sites. Finally, we evaluated the effectiveness of our actions against the likely effectiveness of actions by State and/or local governments. As stated previously, it was our goal to avoid sites that could be most effectively addressed by State or local government. However, the parallel suits against the State and Federal governments limited early coordination in the development of this proposal and the proposed State settlement. Therefore, duplication of effort may occur in the future. To resolve this, as appropriate we will consider withdrawing any actions where comparable State or local protection is established. We did, however, make every effort to make our designations consistent with the existing adjacent State or local designations.

**Definitions**

''Idle speed'' means the minimum speed needed to maintain watercraft steerage.

''Planing'' means riding on or near the water's surface as a result of the hydrodynamic forces on a watercraft's hull, sponsons (projections from the side of a ship), foils, or other surfaces. A watercraft is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

''Slow speed'' means the speed at which a watercraft proceeds when it is fully off plane and completely settled in the water. Watercraft must not be operated at a speed that creates an excessive wake. Due to the different speeds at which watercraft of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A watercraft is not proceeding at slow speed if it is—(1) on a plane, (2) in the process of coming up on or coming off of plane, or (3) creating an excessive wake. A watercraft *is* proceeding at slow speed if it is fully off plane and completely settled in the water, and not creating an excessive wake.

''Slow speed (channel exempt)'' designates a larger area where slow speed is required, through which a maintained, marked channel is exempt from the slow speed requirement.

''Slow speed (channel included)'' means that the slow-speed designation applies to the entire marked area, including within the designated channel.

''Wake'' means all changes in the vertical height of the water's surface caused by the passage of a watercraft, including a vessel's bow wave, stern wave, and propeller wash, or a combination of these.

We have amended the definition of ''water vehicle'' to include the terms watercraft and vessel. These terms are used interchangeably in the rule and in 50 CFR subpart J.

We have also added personal watercraft to this definition.

**Areas Designated as Manatee Refuges**

*Barge Canal*

We are establishing a manatee refuge, containing approximately 276.3 hectares (ha) (682.7 acres), for the purpose of regulating watercraft operation to slow speed (channel included) for the entire length of the Barge Canal and extending eastward to the Canaveral Locks, Brevard County. These regulations will be in effect all year.

The Barge Canal serves as a travel corridor between the Indian and Banana Rivers for manatees and mariners alike. Aerial survey data indicate significant use of the site by manatees. Currently there are four areas within the Barge Canal that are regulated by the State as 40-kilometers-per-hour (25-miles per hour) zones with a 7.6-meters (25-feet) slow-speed shoreline buffer, all year, while the remainder of the Barge Canal is a slow-speed all-year zone. High-speed vessel operation in a confined migration corridor has an enhanced likelihood of resulting in take of manatees. There have been 16 watercraft-related manatee mortalities in the Barge Canal and its vicinity (Florida Marine Research Institute 2000). Requiring vessels to operate at slow speed would minimize the potential for take of manatees.

The State recently approved new regulations for Brevard County that would also designate the Barge Canal as a slow-speed zone; thereby providing a comparable level of manatee protection as our designation. A number of organizations and individuals have appealed the State's rulemaking and it is uncertain at this time when, or whether, the State's designation may take effect. Due to the urgent need to reduce watercraft-related mortality in the Barge Canal, we are proceeding with this designation at this time so that appropriate protective measures will be in place should the State be unable to implement its rule.

*Sykes Creek*

We are establishing a manatee refuge, containing 342.3 ha (845.8 acres) more or less, in Sykes Creek in Brevard County for the purpose of regulating watercraft operation to slow-speed (channel included) all year.

Aerial survey data indicate a significant amount of manatee use of Sykes Creek. Manatees consistently use this site for feeding, resting, and breeding. Like the Barge Canal, it is a fairly narrow water body and has been the site of 13 watercraft-related manatee mortalities (Florida Marine Research Institute 2000). High-speed vessel operation in this area has a high likelihood of resulting in take of manatees. Regulating vessels to proceed at slow speed minimizes the likelihood of a take incident.

The State recently approved new regulations for Brevard County that would also designate Sykes Creek as a

slow speed zone; thereby providing a comparable level of manatee protection as our designation. A number of organizations and individuals have appealed the State's rulemaking and it is uncertain at this time when, or whether, the State's designation may take effect. Due to the urgent need to reduce watercraft-related mortality in Sykes Creek we are proceeding with this designation at this time so that appropriate protective measures will be in place should the State be unable to implement its rule.

**Summary of Comments and Recommendations**

In the August 10, 2001, proposed rule (66 FR 42318), we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We sent direct notification of the proposal and public hearings to 3,258 institutions and individuals, including Federal and State agencies, county governments, scientific organizations, and interested parties. We published legal notices announcing the proposal, inviting public comment, and announcing the schedule for public hearings, on August 30, 2001, in the *Fort Myers News-Press, Citrus County Chronicle, Daytona Beach News-Journal, and Naples Daily News,* on August 31, 2001, in the *St. Petersburg Times, Miami Herald, Orlando Sentinel, Charlotte Sun-Herald, and Tallahassee Democrat,* and on September 4, 2001, in *Florida Today.* The comment period closed on October 9, 2001. We held the public hearings at the Plantation Inn and Conference Center in Crystal River, Florida, on September 10, 2001; Harborview Convention Center in Clearwater, Florida, on September 11, 2001; Holiday Inn in Venice, Florida, on September 12, 2001; and the Radisson Hotel & Conference Center in Melbourne, Florida, on September 13, 2001. Approximately 315 people were in attendance at the public hearings. We received oral comments from 121 individuals.

During the comment period, we received approximately 3,500 written and oral comments concerning the proposal. Most expressed opposition to, or concern about, the proposed designation; however, a number of individuals supported the proposed action. Opposition to the proposed designation primarily centered on perceived economic effects and potential inconvenience to boaters resulting from the action, and the adequacy of current State conservation actions to protect the manatee. We received comments from one State agency and the Governor of Florida. The remaining comments were from individuals or representatives of organizations or groups. The Governor of Florida stated support for the proposed action. The following is a summary of the comments received. Comments of a similar nature have been grouped together. Comments related to specific sites in the proposed rule, other than the two discussed in this final rule, will be addressed when final determinations for those sites are published.

*Comment 1:* The FWC noted our intention to consider withdrawing Federal designations should State or local governments enact comparable protective measures, and recommended that we define the means by which we will determine if actions by State or local governments provide a comparable level of protection.

*Response:* With regard to the Barge Canal and Sykes Creek, we believe that the pending State rule for Brevard County provides, on balance, a greater level of manatee protection than our rule. While we continue to have reservations regarding certain exemptions that have been granted by the State (see response to Comment 21 below), it is clear that the FWC's Brevard County rule, taken as a whole, provides needed protection to a far greater area than our rule. The FWC rule addresses the four areas identified in our proposed rule (Barge Canal, Sykes Creek, Haulover Canal, and Cocoa Beach Municipal Park) with similar or identical measures. Additionally, the FWC rule provides additional protection for manatees throughout the Indian River and Banana River within Brevard County by adding additional shoreline buffers and by eliminating several high-speed access channels. As such, should the State prevail in the challenge to their rulemaking, we believe that the Federal designation of the Barge Canal and Sykes Creek would likely be unnecessary. We view this as a prime example of how the greater resources of the FWC can enable them to accomplish more through State action than can be accomplished through Federal action.

With respect to the other 14 sites identified in our proposed rule, we cannot, at this time, identify specific standards for what would constitute comparable levels of protection. We recognize that there may be alternative means of implementing effective protective measures at many of these sites. These alternatives may be beyond our authority or resources to implement through our rulemaking, but may be available to State or local governments. Rather than limiting the options of State and local governments by insisting that they enact regulations identical to those we have proposed, we intend to participate fully in the State and local rulemaking processes and to articulate our views and recommendations regarding proposed protective measures as early as possible in those processes, particularly with respect to whether we consider potential protection measures to provide a comparable level of protection.

*Comment 2:* The FWC noted that appropriate posting of designated manatee protection areas is a critical element in the success of manatee protection zones, and recommended that we incorporate meetings with the FWC, appropriate Inland Navigation Districts, and local governments, to develop a clear delineation of responsibilities for posting signs for federally designated areas.

*Response:* We agree that appropriate signage is a critical element to the effective implementation of manatee protection areas. We will fully involve the FWC, appropriate Inland Navigation District and local governments, as well as the U.S. Coast Guard, in the development of sign plans for all Federal manatee protection areas.

*Comment 3:* The FWC expressed concern regarding enforcement of the new manatee protection areas and recommended that we clarify that we are responsible for enforcement of these areas. They also expressed concern that establishment of Federal manatee protection areas in and adjacent to State speed zones, which carry different penalties for violation, may generate confusion among the boating public.

*Response:* Manatee protection areas are only effective to the extent that boaters comply with posted regulations. As such, enforcement is an essential component of our effort to establish additional manatee protection areas. FWC officers are authorized to enforce Federal manatee protection area regulations, just as our law enforcement officers can and do enforce State manatee protection regulations. We welcome any assistance that the FWC can provide in the enforcement of these manatee protection areas, but we have made a commitment to ensure that adequate enforcement is provided for these areas. As noted above, the ability to adequately post and enforce designated sites was an important factor in our site selection process.

*Comment 4:* The FWC noted that we have deferred action on the remaining 14 sites identified in the proposed rule until December 2002 to give State and local governments the opportunity to enact comparable protective measures.

The FWC stated that they have no plans to consider rules in two of the sites in the proposed rule (Little Sarasota Bay and Shell Island) and that no final State action would be taken on sites in Tampa Bay by December 2002.

*Response:* We note that, while State action on the sites in Tampa Bay is not anticipated to occur prior to December 2002, local action is likely within this timeframe. Pinellas County has recently adopted an ordinance to provide increased manatee protection at the Bartow Power Plant, and we are currently evaluating the effectiveness of this action. Additionally, Hillsborough County is currently considering measures to improve manatee protection in much of Tampa Bay, including the Gannon and Tampa Electric Company power plant sites identified in our proposed rule. We will monitor the progress of these initiatives over the coming months to determine whether the proposed Federal designations are warranted.

Information regarding the Shell Island and Little Sarasota Bay sites was presented during the public comment period. We are continuing to evaluate the information and have made no decisions regarding final designation of these sites.

*Comment 5:* The FWC concurred with our determination that the data strongly support the decision to designate the Barge Canal and Sykes Creek as manatee protection areas. The FWC indicated they support our proposed designations for these areas, but recommended that the Federal rules be repealed if the FWC is successful in defending their recently adopted rules.

*Response:* We agree that, should the State prevail in the challenge to their Brevard County rule, the Federal designations would likely be unnecessary.

*Comment 6:* Several commenters recommended establishing manatee protection areas at several sites in addition to, or in lieu of, the 16 sites identified in the proposed rule. Other sites recommended for considerations included—the downtown Jacksonville portion of the St. John's River, Duval County; Goodby's Creek, Duval County; the Tomoka River, Volusia County; the Canaveral sewer outfall, Brevard County; the Indian River southeast of the railroad bridge causeway, Brevard County; the Haulover Canal observation area, Brevard County; the Riviera Beach power plant outfall, Palm Beach County; the Weeki Wachee River, Hernando County; the Little Manatee River, Hillsborough County; the Manatee and Braden Rivers, Manatee County; Charlotte Harbor, Charlotte County; Bokeelia Point, Lee County; San Carlos Bay, Lee County; the Caloosahatchee River, Lee County; Mullock Creek/Ten Mile Canal, Lee County; Estero Bay, Lee County; Everglades National Park, Collier and Monroe Counties; Faka Union Canal/Port of the Islands, Collier County; and Ten Thousand Islands/Chokoloskee Bay, Collier County.

*Response:* In designating manatee protection areas, we considered the needs of the species on an ecosystem level in an attempt to address life requirements of the manatee and to progress toward recovery of the species. Tempering this evaluation was the limited resources available to us, in terms of both staffing and funding, for accomplishing the establishment, maintenance, and regulation and enforcement of designated areas.

All of the above-mentioned sites, and many others, were considered at some point in the evaluation process. Some (such as the Weeki Wachee River, Goodby's Creek, and the Canaveral sewer outfall) did not meet our criteria for further consideration because adequate protective measures are currently in place at these sites and the likelihood of future take at these sites is limited, provided the existing regulations are appropriately enforced. Others (such as Caloosahatchee River, Everglades National Park, and Ten Thousand Islands/Chokoloskee Bay) did not meet our criteria for designation at this time because it is as yet unclear, based on current information, what additional protective measures could be implemented to effectively reduce on-going watercraft-related manatee mortality in these areas; however, we agree that these areas warrant further study. We note that even the commenter who recommended we take immediate action in the Ten Thousand Islands/Chokoloskee Bay area could offer no specific recommendation as to what to do in this area. We agree that the remaining sites mentioned above (the St. John's River in downtown Jacksonville, the Tomoka River, the Haulover Canal observation area, the Indian River southeast of the railroad bridge causeway, the Riviera Beach power plant outfall, the Little Manatee River, the Manatee and Braden Rivers, Charlotte Harbor, Bokeelia Point, Estero Bay, San Carlos Bay, Mullock Creek/Ten Mile Canal, and Faka Union Canal/Port of the Islands) do, or may, warrant further consideration, particularly if State or local efforts to improve manatee protection at these sites are unsuccessful, and if manatees do not make satisfactory progress toward recovery. However, we do not agree with the commenters that action at any of these sites is any more urgent than the actions identified in our proposed rule. As previously stated, we believe the sites included in this final rule are areas where federal action could be most effective for manatee conservation and is most urgently needed.

We are committed to continuing the protection of the manatee through a cooperative effort with our management partners at the Federal, State, and local levels, as well as efforts involving private entities and members of the public. We encourage State and local measures to improve manatee protection. Additionally, we have indicated that future actions could establish additional manatee protection areas if the need becomes apparent.

*Comment 7:* In recommending action at the sites identified in Comment 6, some commenters noted that several of the sites identified in our proposed rule were under consideration for designation by the FWC and/or local governments, and questioned our decision to include such sites in our proposed rule, given the likelihood that these sites would be appropriately regulated without Federal designation.

*Response:* Many of the sites in our proposed rule and the two sites in this final rule are currently under consideration for State action. We first became aware of this overlap when the Plaintiffs in the State lawsuit made the terms of the draft settlement agreement public. Due to our inability to discuss pending legal actions with the FWC, only the Plaintiffs were in a position to recognize the overlap and conflicts between the two settlement agreements. The Plaintiffs did not raise these conflicts to our attention. In fact we requested and received several extensions of the deadline for publishing the proposed rule, and during these extensions several options for resolving the situation were presented to the Plaintiffs. All were rejected along with our request for further extensions. As such, in order to meet our settlement obligations, we published the proposed rule. We are publishing this final rule at this time because we have determined that the actions are urgently needed at these sites and because these actions will fulfill our settlement obligations. We have deferred action on the remaining 14 sites because they are somewhat less urgently in need of action, and in order to allow for additional coordination with State and local governments.

*Comment 8:* One commenter stated that we excluded areas from the proposed rule that are, in their view, of extremely high priority, while including in our proposed rule a number of sites

that are, in their view, of much lower concern and/or are being addressed in other ways.

*Response:* We have concluded that the sites recommended by this commenter either do not warrant additional protection, or are of no higher priority than the sites identified in our proposed rule. We note that this commenter agreed that the Barge Canal and Sykes Creek are in need of improved manatee protection.

*Comment 9:* Many commenters recommended that we take action on sites identified in the proposed rule sooner than we have proposed. Many recommended that we make emergency designations on the Barge Canal, Sykes Creek, and the Blue Waters on the Homosassa River, and make final designations on other sites sooner than December 2002.

*Response:* We are firmly committed to establishing appropriate manatee protection in concert with State and local agencies and authorities. We believe that the State should have a lead role in establishing additional manatee protection areas. As such, we are providing latitude to the State and local governments to establish protection at 14 of the proposed manatee protection areas prior to finalizing Federal action. Such protection must be the same or comparable to that described in our proposed rule. We decided to expeditiously enact protection at the Barge Canal and Sykes Creek sites after evaluation of the significant amount of manatee use at these sites and the high probability of take, especially lethal take, at these sites, and after we determined that we could implement effective measures to reduce take at these sites. We determined that enacting emergency designations at any of the sites identified in our proposed rule was not prudent given the high level of public use of these waters and the high level of public interest/concern regarding this rulemaking. While we have determined that effective actions to reduce take over the long term can be implemented at the remaining 14 sites identified in the proposed rule, immediate action at these sites is not necessary to prevent take, nor is it necessary for the recovery of the species.

*Comment 10:* One commenter implied that we were violating the terms of the settlement agreement in the Federal case by failing to propose actions at sites identified by the Plaintiffs in the Federal case to be of high priority.

*Response:* The plain language of the settlement states (paragraph 11): ''The parties recognize that, in evaluating the need for refuges and sanctuaries the Service anticipates considering the needs of the manatee at an ecosystem level in order to ensure that adequate protected areas are available throughout peninsular Florida to satisfy the biological requirements of the species, with a view towards the manatees' recovery within the meaning of section 4 of the ESA.'' The settlement agreement does not require designation of any specific sites as manatee protection areas, and nowhere in the settlement is there a requirement that all protected areas established to meet the needs of the manatee be Federal. Clearly, in ''evaluating the need'' we must consider the existing condition of the ecosystem of which the manatee is a part, which includes an extensive network of protected areas designed specifically to meet the ''needs of the manatee.'' As long as appropriate protective measures are enacted, whether those actions are taken by State or Federal agencies does not matter.

The recovery plan for the Florida manatee makes clear that achieving the goal of recovery will necessarily require the cooperation and efforts of all stakeholders. Our proposed rule for manatee protection areas was also clear on this point when it stated:

> We acknowledge that there exists a network of manatee speed zones and sanctuaries, which have been established throughout peninsular Florida by Federal, State, and local governments. This existing structure works toward the above-stated goal of providing adequate protected areas throughout peninsular Florida to satisfy the biological requirements of the species. The purpose of our evaluation is to identify gaps in the existing network and to propose appropriate measures for filling those gaps.

As such, we have clearly met the letter and spirit of the settlement with respect to designation of manatee protection areas. As stated previously, we have concluded that many of the sites recommended by this commenter do not warrant Federal designation at this time, and we do not agree that the other sites recommended by the commenter are of any higher priority than the sites identified in the proposed rule.

*Comment 11:* One commenter noted that the sites identified in our proposed rule differ in some respects from the ''areas with inadequate protection'' identified in our Final Interim Strategy on Section 7 Consultations for Watercraft Access Projects that may Indirectly Affect the Florida Manatee (Final Interim Strategy) (66 FR 14924).

*Response:* The areas we have proposed for designation as Federal manatee protection areas are in some cases different from the waterbodies we identified as ''areas with inadequate protection'' for the purposes of the Final Interim Strategy. Specifically, of the 13 sites for which we proposed 16 manatee protection areas, only 6 are also identified as ''areas with inadequate protection'' in the Final Interim Strategy.

The standard for manatee protection areas is that such establishment is ''necessary to prevent the taking of one or more manatees'' (50 CFR 17.103). Because ''take'' is very broadly defined, action of some form could be justified for many coastal waters in the State of Florida. In order to focus our efforts in the current rulemaking, we defined four criteria for selecting sites as follows—(1) evidence that the site is used by manatees; (2) historic evidence of take (harm or harassment) of manatees at the site due to waterborne human activities; (3) the potential for additional take based on manatee and human use of the site; and (4) a determination that we could implement effective measures at the site to address the identified problem. Again, many sites throughout Florida could be argued to satisfy the first three criteria to some extent; however, the vast majority of sites do not satisfy criterion four because of limitations we face in terms of personnel and budget and because many areas present manatee protection problems due to circumstances that are difficult or impossible to correct within our manatee protection area authority.

On the other hand, ''areas with inadequate protection'' were identified in the context of conducting ESA section 7 consultations regarding U.S. Army Corps of Engineers authorization of boat access facilities. In this context, watercraft-related ''take'' of manatees is a distant indirect effect of the authorization of a boat access facility. While we agree that construction of boat access facilities is a potential contributing factor to watercraft-related take of manatees, in the vast majority of cases a direct cause and effect relationship does not exist between the construction of a marina, dock, or boat ramp, and watercraft-related take of manatees. As such, in order to be considered an ''area with inadequate protection'' in this context, the existing protection measures on a given waterbody must be such that the likely result of adding additional boat access to the area is a foreseeable increase in watercraft-related take. This could be because current protection measures are either totally lacking or woefully inadequate in areas with chronic watercraft-related take, or because of issues peculiar to the waterbody such that incidental take of manatees is

inevitable regardless of protective measures implemented.

As such, the standard for identifying a waterbody as an ''area with inadequate protection'' is generally higher than that for establishing a manatee protection area. This is why 7 of the 13 areas proposed as manatee protection areas are not also ''areas with inadequate protection.'' Conversely, 11 sites identified as ''areas with inadequate protection'' were not proposed as manatee protection areas. This is because either we determined that we could take no action at this time to effectively address the identified problem at a given site, or we decided that action at a particular site was not as high a priority as action at the sites contained in the proposed rule, and was therefore not included in the proposed rule due to limitations of staff and/or budget. Designation as manatee protection areas could be proposed for this latter group of sites in the future, if staffing and funding permit, and if such actions are determined to be necessary for the recovery of the species. Our list of ''areas with inadequate protection'' will continue to be updated as new information becomes available.

*Comment 12:* Some commenters expressed concern that requiring boats to travel at slow speed throughout the entire length of the Barge Canal and Sykes Creek would add an unreasonable amount of time to boat trips through this area. One commenter estimated that the designations would add 3 hours and 12 minutes to a round trip.

*Response:* In response to this concern we tested the amount of time required to travel from the southernmost end of the slow speed zone on Sykes Creek, through Sykes Creek and the Barge Canal to the Canaveral Locks. This represents the longest possible distance that would need to be traveled at slow speed under this final rule. Under the existing speed zones this trip currently takes approximately 50 minutes. Under the conditions established in this final rule, the same trip will take approximately 1 hour and 25 minutes; an increase in travel time of 35 minutes.

*Comment 13:* Several commenters requested that we hold additional public hearings.

*Response:* One public hearing was announced with the proposed rule. We scheduled an additional three hearings in order to provide ample opportunity for public comment. All hearings were well attended, and everyone in attendance was afforded the opportunity to express their comments and concerns. Additionally, we afforded a 60-day public comment period to allow for the submission of written comments. Finally, additional information regarding the proposed rule, including the material presented at the public hearings has been available on our website. We have also responded, in timely fashion, to requests for information from specific stakeholders throughout the rulemaking process. We believe that we have provided sufficient opportunity for public comment on this rulemaking.

*Comment 14:* Some commenters expressed concern that human safety could be compromised by forcing all boaters into narrow channels, bottlenecks, and other confined circumstances.

*Response:* We were very cognizant of human safety issues during the design phase of the manatee protection area planning process. Human safety while boating has always been and will continue to be the responsibility of the vessel operator. The two manatee protection areas in this final rule require vessels to proceed at slow speed and, as such, enhance boater safety while in these areas. At no site does the designation of these manatee protection areas place mariners in a position of encountering high-speed vessel traffic with no alternative safe route.

*Comment 15:* Some commenters expressed concern that human safety will be compromised by requiring vessel operators to proceed at slow speeds in the face of emergency situations, like rapidly approaching thunderstorms or medical emergencies.

*Response:* Federal regulations allow for an exemption to manatee protection area regulations in the event of emergency. Specifically, our regulations (50 CFR 17.105(c)) state that ''any person may engage in any activity otherwise prohibited by this subsection if such activity is reasonably necessary to prevent the loss of life or property due to weather conditions or other reasonably unforeseen circumstances, or to render necessary assistance to persons or property.''

*Comment 16:* Several commenters noted that the size of the manatee population appears to have increased over time, and questioned the need for additional protective measures.

*Response:* A discussion of the current status of the manatee population is provided in the ''Background'' section. Two of the criteria for determining whether species are endangered or threatened under the ESA are ''(D) the inadequacy of existing regulatory mechanisms and (E) other natural or manmade factors affecting its continued existence'' (16 USC 1533(a). Furthermore, the MMPA sets a general moratorium for the taking of marine mammals. Regardless of the size or status of the manatee population, we are required to ensure that take of manatees is minimized to the extent possible, and all take is prohibited unless authorized under the MMPA.

Minimizing, to the extent practical, the taking of manatees as a result of watercraft collisions is a top priority in manatee recovery and management programs. Currently, the areas addressed in this rule have a significant potential for ''take'' based on the amount of manatee use and are characterized by limited current protective regulations.

*Comment 17:* Several commenters stated that we should focus on better enforcement of existing regulations before imposing additional restrictions on boaters.

*Response:* This issue was identified as one of the alternatives addressed within the Manatee Protection Area Environmental Assessment. While improvements in both the enforcement and education arenas are laudable in enhancing manatee protection, such improvements may be of little effect when applied to areas without regulations or with inadequate protection to minimize the take of manatees. The State has placed an increased emphasis on enforcement, and we have made a substantial commitment to enforcing manatee protection areas over the past few years. We anticipate that these efforts will continue.

*Comment 18:* Some commenters recommended that we abstain from designation of Federal manatee protection areas and allow the State and local authorities to provide for manatee protection.

*Response:* We are the Federal agency responsible for manatee management and protection activities under both the ESA and the MMPA. As such, we must take an active role in regulatory activities involving the manatee. This in no way diminishes the important role that State and local agencies play, or the role of the private sector. Recognition is given to both State and local efforts to establish manatee protection, and we are committed to supporting these efforts. We have stated that the State should have leadership in establishing additional manatee protection areas. With this final rule, we have focused on sites where watercraft-related manatee mortality is highest, and where we determined that Federal action can effectively address the needs in the particular area. If the State is successful in implementing their pending rules for Brevard County, we will consider

withdrawing Federal designation of these sites.

*Comment 19:* Some commenters stated that the definition of ''Slow Speed'' is arbitrary and unenforceable, and recommended that we consider using some other standard, such as a ''miles per hour'' limit to regulate vessel speed.

*Response:* The definition of ''slow speed'' used in this rule is essentially the same as that used by the State in the Florida Manatee Sanctuary Act (F.A.C. 68C–22). This definition is generally understood by mariners and has proven to be enforceable. It is important to use a definition of ''slow speed'' that complements that used by the State. The sites included in this final rule are located in direct proximity to areas regulated by the State. The use of the same definition will ensure consistency and lessen confusion among the boating public.

The establishment of another definition of ''slow speed'' or the use of a ''miles per hour'' speed zone poses many problems. Establishment of a ''miles per hour'' standard would necessitate all boats operating in these zones to be equipped with accurate speedometers. This standard would also require enforcement officers to procure equipment and attend periodic training to enforce these conditions. Of more importance is that boats operating at speeds in excess of what is allowed under the current definition of ''slow speed'' pose increased threats to manatees. Boats proceeding while ''plowing the water'' with elevated bows, such as occurs when a vessel is operating at greater than ''slow speed,'' both obscure the forward vision of the operator and place the propulsion systems of the watercraft lower in the water. Both of these conditions increase the likelihood of a vessel collision with a manatee. With a subsequent increase of speed, the configuration of the vessel changes to one of planing. While this condition places the hull and outdrives of vessels higher in the water, it also decreases the reaction time needed by both the operator and the manatee to detect one another and take action to avoid collision.

*Comment 20:* Many commenters stated that we have not adequately evaluated the economic impact of these designations.

*Response:* The economic analysis conducted as part of this rulemaking determined that these actions would not have a significant economic impact. The two sites identified in this final rule will remain open for public access, albeit at ''slow speed'' travel. Through public hearings and public comment periods we sought information and comment on the activities occurring in these two sites. To our knowledge of the activities in these areas, and the fact that no activities will be prohibited although some may be inconvenienced by the need to proceed at slower speeds, we believe that this rule will not result in a significant economic dislocation.

*Comment 21:* One commenter noted that the commenter operates boat manufacturing facilities on the Barge Canal, and stated that the proposed designation would adversely affect their ability to economically continue boat testing operations resulting in a substantial economic loss to the commenter's company. The commenter requested that we provide an exemption to our rule, similar to the exemption granted by the State, to allow the commenter to continue to conduct up to 40 tests per month at speeds up to 35 miles per hour in a portion of the Barge Canal.

*Response:* Federal regulations provide exceptions to manatee protection area regulations only in limited circumstances (50 CFR 17.105(c)). We have assessed the information and recommendations presented by this commenter and have concluded that we do not have the authority under our existing regulations to grant an exception for this type of activity based on economic hardship.

The MMPA prohibits the take of marine mammals, including manatees. As such, we cannot authorize, or exempt from regulation, any activities that may cause the take of manatees, other than those necessary for protecting life and property. Nonetheless, we recognize that certain existing uses of some waterbodies could be adversely affected or eliminated by designation of manatee protection areas. We do not oppose continuation of these uses, provided it can be demonstrated that such uses will not cause take of manatees. Flexibility exists under the MMPA to except certain waterborne activities in refuges from the speed zone restrictions if it can be shown that such activities will be carried out under stringent conditions that prevent the take of manatees. At this time we intend to propose amendments to our regulations to incorporate a process by which we may evaluate and authorize specific activities within designated manatee protection areas, provided parties requesting such authorization can demonstrate that their activities will not cause the take of manatees.

*Comment 22:* One commenter suggested that our proposed rule was contrary to the spirit and intent of Executive Order 12866, because we did not contact the commenter directly regarding the impact the proposed rule may have upon the individual's operations.

*Response:* As part of the rulemaking process, we published an advance notice of proposed rulemaking in which we solicited information from the public regarding issues that should be addressed through the rulemaking. We also held six public workshops that provided additional opportunities for the public to provide input and voice concerns. With publication of the proposed rule, we afforded a 60-day period for submitting written comments, and held four public hearings. Through the commenter's participation in this process, we are aware of their concerns. We have responded to those concerns to the best of our ability with this final rule and our stated intent to pursue amendments to our regulations. We have also updated the information regarding the economic effects of the rule, as appropriate, to reflect information submitted by the commenter. These actions meet the requirements of Executive Order 12866.

*Comment 23:* Many commenters suggested that technological advances may now make it possible for boaters and manatees to better detect the presence of one another and thereby avoid collisions, and recommended that these technologies be employed instead of restricting boat speeds.

*Response:* Ongoing research is evaluating the sensory abilities of the manatee and the environmental factors that may affect these abilities. Potential technologies may enable boaters to better detect the presence of manatees. However, no technology is currently available that is proven to be effective in avoiding collisions between manatees and boats. For the foreseeable future, detection and avoidance technology will likely be used to supplement, rather than replace, traditional management strategies.

*Comment 24:* Some commenters recommended that we selectively regulate watercraft and provide exemptions for those not responsible for take of manatees. These commenters stated that most watercraft-related manatee mortality is caused by large vessels and/or barges, and that boats without propellers do not harm manatees.

*Response:* The manatee mortality database contains information on the necropsy results of over 4,000 manatees. From this large information source, several interesting aspects of watercraft-related manatee mortality may be surmised. It is impossible to determine, in most cases, the size of the boat which

struck a manatee. The exception to this is the very few cases where a responsible boater has reported a collision and researchers are able to compare the actual vessel to the observed injuries. In a few documented cases, manatees were obviously killed by a large vessel, the symptoms of which include massive crushing and or bifurcation (slicing into pieces) of the animal. The vast majority of cases involving watercraft-related mortality involve less dramatic injuries. Investigations comparing blade diameter and pitch indicate that the majority of manatees killed from watercraft-related collision are struck by smaller, fast-moving vessels.

As stated above, injuries to manatees from vessel impacts can be characterized as either lacerations or blunt trauma. Percentages generated by the mortality data-base indicate that 55 percent of the watercraft-related mortalities are the result of blunt trauma. Such trauma can result from impacts from vessel hulls, lower units, or other vessel components. Vessels without propellers (e.g., personal watercraft) still have the potential to ''take'' manatees.

*Comment 25:* Some commenters recommended that we consider factors such as water depth and the presence of aquatic vegetation when deciding the boundaries of manatee protection areas rather than base boundaries on unnatural features such as navigation channels or bank-to-bank designation of waterbodies.

*Response:* We considered such environmental features in evaluating potential manatee protection sites, because these factors influence manatee use of areas. There have been instances where habitat features (such as water depth) have been used to delineate boundaries of protection areas. The disadvantage of the use of such features for the purpose of this rule is the complexity and costs associated with such designs, and the potential for causing confusion among the regulated public resulting in poor compliance. Protection areas designed around environmental factors tend to be irregular and complex. This, in turn, results in significant increases in costs of implementation in terms of posting and the subsequent costs of maintenance. The limited resources available for this program required a less complex strategy for providing adequate protection for manatees and reasonable use of these areas by the public.

*Comment 26:* Some commenters recommended that we allow the challenge to the State rule for Brevard County to be adjudicated prior to taking action at the Barge Canal and Sykes Creek.

*Response:* Information regarding these sites indicates a clear need to establish protective measures to prevent, to the extent possible, take of manatees. The process of finalizing this rule is occurring simultaneously with the aforementioned challenge to the State rule. We concluded that we must move forward with designation of these sites at this time in order to ensure that appropriate protective measures are in place at these sites as soon as possible.

*Comment 27:* Some commenters noted that the Barge Canal and Sykes Creek provide ideal training sites for competitive rowers from around the Nation and the world, particularly during winter months. These waterbodies are ideally suited for training due to the fact that, regardless of wind direction, crews can find protected areas with flat water that prevents the rowing shells from being swamped. These commenters further noted that crews are accompanied by chase boats that carry the coaches, and that a primary function of these chase boats is to render aid to the crews in the event of an emergency. The chase boats are typically small john boats with 10 to 15 horsepower engines. The commenters stated that designating the Barge Canal and Sykes Creek as slow speed zones would deprive them of use of these waters as training facilities, and that no other suitable locales for such training are available in the area.

*Response:* We place a high priority on human safety. As such, we will allow chase boats operating in the Barge Canal and Sykes Creek manatee protection areas to travel in excess of ''slow speed'' for the purpose of safety during training of sculling/crewing athletes. The purpose of the chase boats is, in part, to render necessary assistance to persons or property, which is excepted under our existing regulations (50 CFR 17.105). Chase boats must remain in close proximity to rowing shells to provide safety equipment (such as personal flotation devices) and other needed assistance. Persons engaged in such activity must remain vigilant for manatees and must take appropriate action, including termination of training if necessary, to avoid take of manatees. These vessels will be required to comply with all posted speed zones when not actively engaged in training, including during transit to and from training areas.

**Required Determinations**

*Regulatory Planning and Review*

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic impact of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis is not required. We do not expect that any significant economic impacts would result from the establishment of 2 manatee refuges (1,528.5 acres) in Brevard County in the State of Florida. The public support for manatee protection is substantial in Florida. Using a contribution continuum method and reinforced by other empirical techniques, a study by Bendle and Bell in 1993 estimated that Floridians placed an asset value of $3.2 billion (2001 dollars) on the protection of the manatee population. This amounts to a per-household value of $18.12. The $3.2 billion is an estimate of the benefit derived by Floridians from the existence of the manatee population.

The purpose of this rule is to establish two additional manatee protection areas in Florida. We are proposing to reduce the level of take of manatees by controlling human activity in these two areas. Affected waterborne activities include the use of water vehicles. The two areas designated would be slow-speed zones. The economic effect of these designations will be measured by the number of watercraft users who use alternative sites for their activity or have a reduced quality of the waterborne activity experience at the designated sites. The State of Florida has 12,000 miles of rivers and streams and 3 million acres of lakes and ponds so the designation of 1,528 acres for lower speed operation is unlikely to prevent any waterborne activity because of this rule, although some individuals may need to modify slightly when, where, or how they pursue certain waterborne activities.

One watercraft manufacturer is known to use one of the designated sites as a boat testing area. While alternative sites without speed zones are available nearby that allow for continuation of boat testing, use of these sites would entail costs to the manufacturer due to additional travel time needed to conduct testing. This rule will affect the company's boat testing program. We are intending to propose amendments to our regulations (50 CFR 17.105) to allow for otherwise prohibited activities to

continue provided those engaging in such activities can demonstrate that the activities will not result in take of manatees.

For some watercraft users, the inconvenience and extra time required to cross a slow-speed zone will reduce the quality of the waterborne activity. The extra time required for commercial charter boats to reach fishing grounds will reduce on-site fishing time and could result in lower consumer surplus for the trip. The number of recreationists and charter boats using the designated sites is not known. The State of Florida has nearly 800,000 registered boats, but only those boats and recreationists using the designated sites will potentially be affected. However, since Florida has 12 thousand miles of rivers and streams and 3 million acres of lakes and ponds, only a small percentage of boat users will likely be affected by this rule. The current designation of these two protection areas will cause some inconvenience in travel time, but alternative sites within the proximity of the sites are available for all waterborne activities. Recreationists may be inconvenienced by having to travel to an undesignated area, but they are not prohibited from participating in any waterborne activity. Currently, no data sources estimate the amount of recreational activity in and around the two designated areas. For these reasons, we believe some inconvenience to the public may occur because of reduced travel speeds but that the economic impact will not be significant.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule is consistent with the approach used by State and local governments to protect manatees in Florida. We recognize the important role of State and local partners, and we continue to support and encourage State and local measures to improve manatee protection. We have focused the current action on those sites in which we have determined that Federal action can effectively address the needs in the particular area. If comparable protections are put in place in the future, we will consider removing those areas from Federal protection.

c. This final rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Minimal restrictions to existing human uses of the sites will result from this rule, and no entitlements, grants, user fees, loan programs or the rights and obligations of their recipients will be affected.

d. This rule will not raise novel legal or policy issues. We have previously established manatee protection areas.

*Regulatory Flexibility Act*

I certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

We conducted both public hearings and public notice and comment periods to determine the activities occurring in Barge Canal and Sykes Creek that might be affected by the creation of these manatee refuges. Based on the activities that we are aware of being conducted in these areas, and the fact that no activities will be prohibited although some may be inconvenienced by the need to proceed at slower speeds, we believe that this rule will not result in a significant economic dislocation.

To determine the potential effects of this rule on small entities, we looked at economic data from Brevard County. Table 1, below, depicts general economic characteristics, and Table 2 gives employment data. As can be seen in Table 1, the growth rate is slightly lower than the State average. Larger households account for the lower per capita income estimate. The proportion of total industry earnings coming from the amusements and recreation sector is 0.5 percent. The service sector is the largest economic contributor followed by retail trade and the real estate sectors. Overall, only a small proportion of earnings come from the amusement and recreation sector. As a result, a small impact to the recreation sector would not result in a significant effect on county-level income.

TABLE 1.—ECONOMIC CHARACTERISTICS OF THE SEVEN AFFECTED COUNTIES IN FLORIDA—1997

| Selected Florida Counties | Employment | Per capita personal income (Dollars) | 10 year rate of growth (Percent) | Personal Income ($000) | 10 year rate of growth (Percent) | Total industry earnings ($000) | Services industry earnings for amusements and recreation ($000) | Percent of total |
|---|---|---|---|---|---|---|---|---|
| Establishing Sanctuaries: | | | | | | | | |
| Citrus | 35,663 | $18,493 | 3.9 | $2,060,167 | 6.9 | $793,347 | $6,650 | 0.8 |
| Hillsborough | 644,694 | 23,719 | 5.2 | 21,558,783 | 6.6 | 18,847,236 | 67,676 | 1.4 |
| Pinellas | 506,946 | 28,367 | 4.9 | 24,770,929 | 5.5 | 13,876,518 | 114,826 | 0.8 |
| Establishing Refuges: | | | | | | | | |
| Brevard | 223,815 | 22,205 | 3.7 | 10,342,080 | 6.3 | 6,255,354 | 34,237 | 0.5 |
| Charlotte | 47,091 | 21,861 | 3.7 | 2,894,781 | 7.6 | 995,159 | 10,336 | 1.0 |
| Lee | 196,448 | 25,568 | 4.4 | 9,862,900 | 7.3 | 4,848,936 | 61,103 | 1.3 |
| Saralota | 169,984 | 35,654 | 5.2 | 10,706,931 | 6.8 | 4,239,034 | 114,742 | 2.7 |
| State of Florida | 8,032,538 | 24,799 | 4.5 | 363,979,647 | 6.6 | 220,985,959 | 4,255,304 | 1.9 |

**Source:** http://govinfo.library.orst.edu/cgi-bin/reis-list.

Table 2 provides employment data using Standard Industrial Classification (SIC) codes. The latest available published data pertained to 1997 for the total number of establishments in the SIC codes for fishing, hunting, trapping (SIC code 9), water transportation (SIC code 44), miscellaneous retail and services (SIC code 59), amusement and recreation services (SIC code 79), and nonclassifiable establishments. These are the establishments most likely to be directly associated with recreationists pursuing waterborne activities where manatees may be involved. As can be seen on Table 2, of the total number of establishments in these SIC codes, a large proportion employ fewer than 9 employees with the largest number of establishments employing fewer than 4 employees. If any economic impacts are associated with this rule, they will affect some proportion of these small entities.

TABLE 2.—EMPLOYMENT CHARACTERISTICS OF BREVARD COUNTY, FLORIDA—1997

[Includes sic codes 09, 44, 59, 79, services, and nec][1]

| | Mid-March employment | Total establish-ments | Number of establishments (1–4 employees) | Number of establishments (5–9 employees) | Number of establishments (10–19 employees) | Number of establishments (20 and over employees) |
|---|---|---|---|---|---|---|
| Brevard County ..... | 65,049 | 5,292 | 3,145 | 1,075 | 581 | 591 |

**Source:** http://fisher.lib.virginia.edu/cig-local/cbpbin/go.cgi.
[1] sic 09—Fishing, hunting, and trapping.
sic 44—water transportation.
sic 59—miscellaneous retail services division.
sic 79—amusement and recreation services nonclassifiable establishments division.

All of the acreage designated (1,528.5 acres) by this rule is for manatee refuges, which would only require a reduction in speed. We acknowledge that watercraft operating in barge canal will be required to go slower in designated areas and will required approximately 35 additional minutes to traverse the canal. We believe the additional time necessary will cause more than an insignificant economic effect. The additional time required may cause some recreationists to go to alternative sites, which may cause some loss of income to some small businesses. However, the additional time required is minimal and we believe that this will not be a significant economic dislocation.

The only known direct effect will be on a boat manufacturer which tests boats in the Barge Canal. Testing boats require the manufacturer to operate boats at speeds of up to 35 mph, and the costs of relocating the test site have not been specifically estimated. However, based on information provided by the company, designation of the Barge Canal as a manatee protection area may have a more than minimal impact on the boat testing operations of this business. Substitute sites are available within a reasonable distance; however, the costs of operating at these sites will be substantially greater than the costs of using the current test site in the Barge Canal.

As mentioned above, we intend to propose amendments to our regulations (50 CFR 17.105) to incorporate a process by which we may evaluate and authorize specific activities within designated manatee protection areas, provided parties requesting such authorization can demonstrate that their activities will not cause the take of manatees. If the manufacturer is able to meet this standard, we anticipate that this rule will result in at most a temporary impact on their boat testing program.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

a. Does not have an annual effect on the economy of $100 million or more. As shown above, this final rule may cause some inconvenience to recreationists because of the speed restriction on manatee refuge areas, but this should not translate into any significant business reductions for the many small businesses in the seven potentially affected counties, aside from the above-mentioned boat manufacturer. An unknown portion of the establishments shown on Table 2 could be affected by this rule. Because the restrictions on recreational activity are believed to be no more than an inconvenience for recreationists, we believe that any economic effect on small entities resulting from changes in recreational use patterns will be insignificant also.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Aside from the above-mentioned effects of this rule on the testing of boats in the Barge Canal, which have not been specifically quantified and which are anticipated to be temporary, unforeseen changes in costs or prices for consumers stemming from this rule are unlikely. The charter boat industry may be affected by lower speed limits for some areas when traveling to and from fishing grounds. No specific information regarding potential costs to the charter boat industry was provided during the rulemaking process. We do not believe that reduced speed limits will result in a significant economic effect.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As stated above, this rule may generate some level of inconvenience to recreationists because of speed limits, and a temporary interruption in the testing of boats in the Barge Canal, but these effects are believed to be minor and will not interfere with the normal operation of other businesses in the affected counties. The added travel time to traverse some areas is not expected to be a major factor that will impact business activity.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The designation of manatee refuges and sanctuaries imposes no new obligations on State or local governments.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. As such, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

*Takings*

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. The final manatee protection areas are located over State-owned submerged bottoms. Any property owners in the vicinity will have navigational access to their property.

*Federalism*

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. As discussed earlier, we coordinated with the State of Florida to the extent possible on the development of this rule.

*Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Paperwork Reduction Act*

This regulation does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The final regulation will not impose new record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

*National Environmental Policy Act*

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment has been prepared and is available for review upon request by writing to the Jacksonville Field Office (*see* **ADDRESSES** section).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175 and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

*Energy Supply, Distribution or Use (Executive Order 13211)*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is not a significant regulatory action under Executive Order 12866 and it only requires vessels to proceed at slow speed along two small segments (600.6 ha or 1528.5 acres) of waterways in Florida, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

*References Cited*

A complete list of all references cited in this final rule is available upon request from the Jacksonville Field Office (*see* **ADDRESSES** section).

*Author*

The primary author of this document is Cameron Shaw (*see* **ADDRESSES** section).

*Authority*

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub.L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.102, remove the definition for ''water vehicle'' and add definitions, in the alphabetical order, as follows:

**§ 17.102 Definitions.**

* * * * *

*Idle speed* is defined as the minimum speed needed to maintain steerage (direction) of the vessel.

* * * * *

*Planing* means riding on or near the water's surface as a result of the hydrodynamic forces on a water vehicle's hull, sponsons, foils, or other surfaces. A water vehicle is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

*Slow speed* is defined as the speed at which a water vehicle proceeds when it is fully off plane and completely settled in the water. Due to the different speeds at which water vehicles of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A water vehicle is *not* proceeding at slow speed if it is: on a plane; in the process of coming up on or coming off of plane; or creating an excessive wake. A water vehicle *is* proceeding at slow speed if it is fully off plane and completely settled in the water, not creating an excessive wake.

*Slow speed (channel exempt)* means that the slow-speed designation does not apply to those waters within the maintained, marked channel.

*Slow speed (channel included)* means that the slow-speed designation applies both within and outside the designated channel.

*Wake* means all changes in the vertical height of the water's surface caused by the passage of a water vehicle, including a vessel's bow wave, stern wave, and propeller wash, or a combination thereof.

* * * * *

*Water vehicle, watercraft,* and *vessel* include, but are not limited to, boats (whether powered by engine, wind, or other means), ships (whether powered by engine, wind, or other means), barges, surfboards, personal watercraft, water skis, or any other device or mechanism the primary or an incidental purpose of which is locomotion on, or across, or underneath the surface of the water.

3. Amend § 17.108 as follows:

a. Remove the note following paragraph (b) and;

b. Add paragraph (c) as set forth below.

**§ 17.108 List of designated manatee protection areas.**

* * * * *

(c) *Manatee refuges.* The following areas are designated as manatee refuges. For each manatee refuge, we will state on appropriate signs which, if any, waterborne activities are prohibited, and state the applicable restrictions, if any, on permitted waterborne activities. The areas that will be posted are described as follows:

(1) The Barge Canal Manatee Protection Area

(i) The Barge Canal Manatee Protection Area is described as all waters lying within the banks of the Barge Canal, Brevard County, including all waters lying within the marked channel in the Banana River that lie between the east entrance of the Barge Canal and the Canaveral Locks; containing approximately 276.3 ha (682.7 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) all year. The use of watercraft at speeds greater than slow speed is prohibited throughout the Barge Canal Manatee Protection Area.

BILLING CODE 4310–55–P

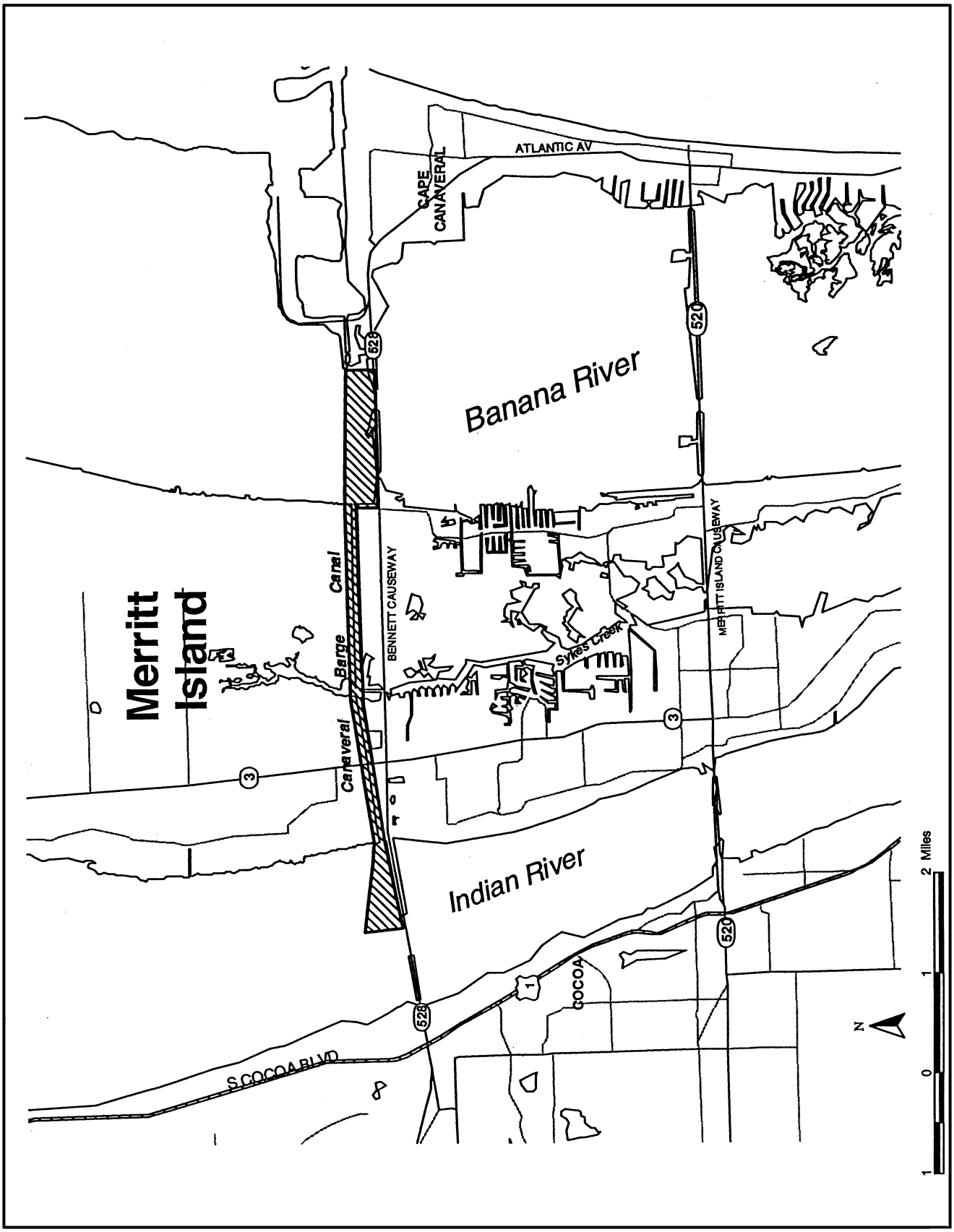


**Figure 1. Barge Canal Manatee Refuge**

(2) The Sykes Creek Manatee Protection Area.

(i) The Sykes Creek Manatee Protection Area is described as all waters, including the marked channel in Sykes Creek, Brevard County. In particular, the portion of Sykes Creek southerly of the southern boundary of that portion of the creek commonly known as the ''S'' curve (said boundary being a line bearing East from a point on the western shoreline of Sykes Creek at approximate latitude 28 degrees 23′24″ N, approximate longitude 80 degrees 41′27″ W) and northerly of the Sykes Creek Parkway; containing approximately 342.3 ha (845.8 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) all year. The use of watercraft at speeds greater than slow speed is prohibited throughout the Sykes Creek Manatee Protection Area.

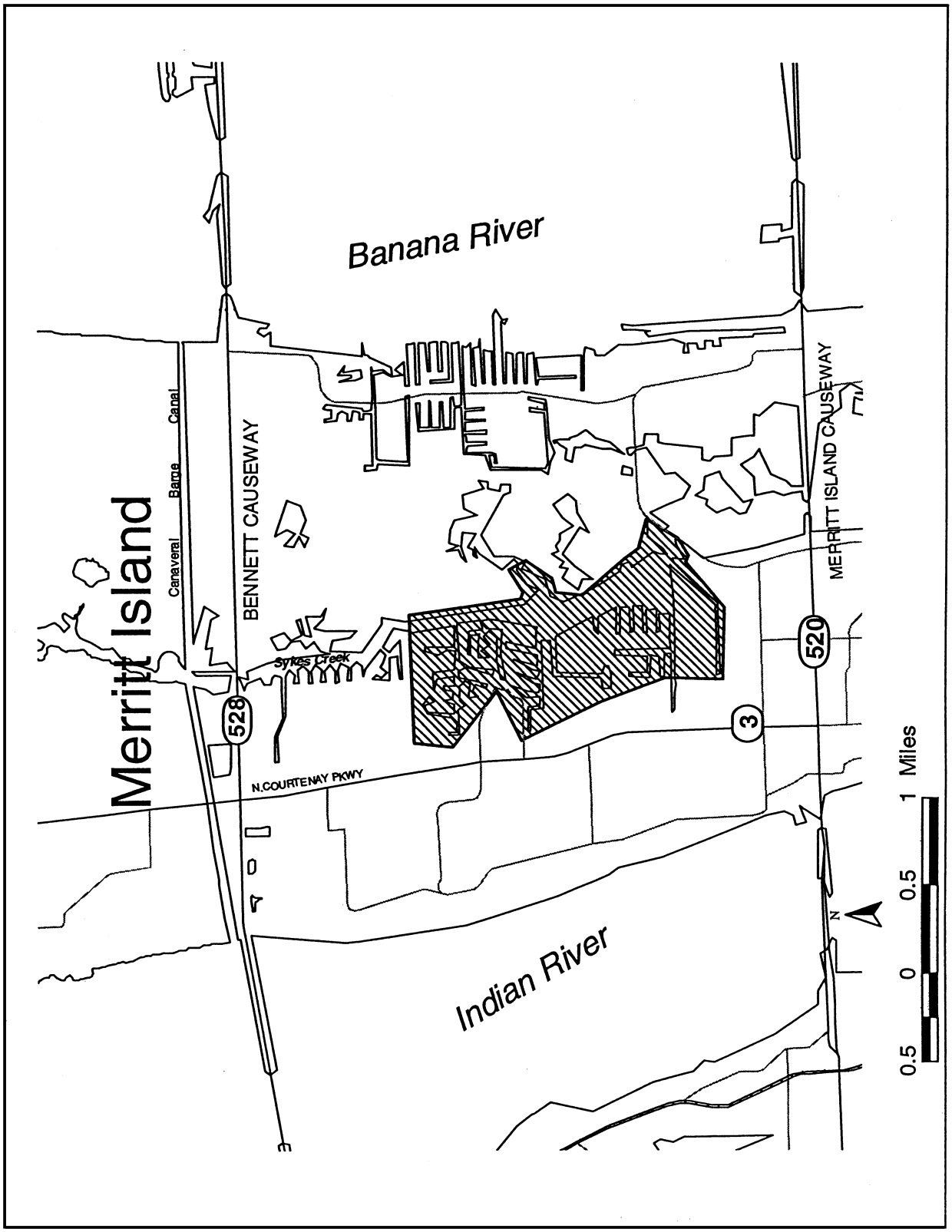


**Figure 2. Sykes Creek Manatee Refuge**

Dated: December 28, 2001.

**Marshall P. Jones, Jr.,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 02–265 Filed 1–4–02; 8:45 am]

**BILLING CODE 4310–55–C**

# Proposed Rules

Federal Register
Vol. 67, No. 4
Monday, January 7, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 330

**[Docket No. 95–095–3]**

**RIN 0579–AA80**

### Plant Pest Regulations; Update of Current Provisions

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

**ACTION:** Notice of reopening and extension of comment period.

**SUMMARY:** We are reopening and extending the comment period for our proposed rule that would revise our regulations regarding the movement of plant pests by adding risk-based criteria for determining the plant pest status of organisms, establishing a notification process that could be used as an alternative to the current permitting system, providing for the environmental release of organisms for the biological control of weeds, and updating the text of the subpart. This action will allow interested persons additional time to prepare and submit comments.

**DATES:** We invite you to comment on Docket No. 95–095–2. We will consider all comments we receive by that are postmarked, delivered, or e-mailed by February 6, 2002.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 95–095–2, Regulatory Analysis and Development, PPD,APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 95–095–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 95–095–2'' on the subject line.

You may read any comments that we receive on Docket No. 95–095–2 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street andIndependence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert Flanders, Risk Assessment Branch Chief, or Ms. Deborah Knott, Permits Branch Chief, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; phone 301–734–5930 (Dr. Flanders) or 301–734–5055 (Ms. Knott).

**SUPPLEMENTARY INFORMATION:**

#### Background

On October 9, 2001, we published in the **Federal Register** (66 FR 51340–51358, Docket No. 95–095–2) a proposal to revise our regulations regarding the movement of plant pests by adding risk-based criteria for determining the plant pest status of organisms, establishing a notification process that could be used as an alternative to the current permitting system, providing for the environmental release of organisms for the biological control of weeds, and updating the text of the subpart.

Comments on the proposed rule were required to be received on or before December 10, 2001. We are reopening and extending the comment period on Docket No. 95–095–2 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between December 11, 2001(the day after the close of the original comment period) and the date of this notice.

In addition, we would like to point out that the **DATES** and **ADDRESSES** sections of this notice contain information regarding the submission of comments that was not contained in the October 9, 2001, proposed rule. Specifically, we are now accepting comments via e-mail and will consider comments submitted by postal mail that are postmarked rather than received in our offices by the close of the comment period.

**Authority:** 7 U.S.C. 450, 2260, 7711, 7712, 7714, 7718, 7731, 7734, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 27th day of December, 2001.

**Kevin Shea,**

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

[FR Doc. 02–263 Filed 1–4–02; 8:45 am]

**BILLING CODE 3410–34–U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 98–ANE–48–AD]**

**RIN 2120–AA64**

### Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

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

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

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Pratt & Whitney JT8D series turbofan engines, that currently requires revisions to the Time Limits Section (TLS) of the manufacturer's Engine Manuals (EMs) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This proposal would modify the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. An FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures.

The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

**DATES:** Comments must be received by March 8, 2002.

**ADDRESSES:** Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299. 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. Comments may be inspected at this location by appointment between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–43–AD.'' The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

**Discussion**

On October 16, 2000, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 2000–21–08, Amendment 39–11940 (65 FR 65731, November 2, 2000), to require revisions to the Time Limits Section (TLS) of the Pratt & Whitney (PW) JT8D–200 Turbofan Engine Manual to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

**New Inspection Procedures**

Since the issuance of that AD, an FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for additional mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. This proposal would modify the time limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements.

**Proposed Actions**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–21–08 to add additional critical life-limited parts for enhanced inspection at each piece-part opportunity.

**Economic Analysis**

The FAA estimates that 5821 engines installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 8 work hours per engine to perform the enhanced inspection for the first stage HP turbine disks. The average labor rate is $60 per work hour. The cost impact of the added inspections per engine is approximately $480 per year, with the approximate total cost for the US fleet of $2,794,080 per year.

**Regulatory Impact**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39–11940 (65 FR 65731, November 2, 2000 and by adding a new airworthiness directive, to read as follows:

**Pratt & Whitney:** Docket No. 98–ANE–48–AD. Supersedes AD 2000–21–08, Amendment 39–11940.

*Applicability:* Pratt & Whitney (PW) JT8D–200 series turbofan engines, installed on but not limited to McDonnell Douglas MD80 series airplanes.

**Note 1:** This airworthiness directive (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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

**Inspections**

(a) Within the next 30 days after the effective date of this AD, revise the Time Limits Section (TLS) of the JT8D/09200 Turbofan Engine Manual, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following: ''Critical Life Limited Part Inspection

*A. Inspection Requirements*

(1) This section has the definitions for individual engine piece parts and the inspection procedures which are necessary when these parts are removed from the engine.

(2) It is necessary to do the inspection procedures of the piece parts in paragraph B when:

(a) The part is removed from the engine and disassembled to the level specified in paragraph B and

(b) The part has accumulated more than 100 cycles since the last piece part inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

(3) The inspections specified in this paragraph do not replace or make not necessary other recommended inspections for these parts or other parts.

*B. Parts Requiring Inspection*

**Note:** Piece part is defined as any of the listed parts with all the blades removed.

| Description | Section | Inspection |
|---|---|---|
| Hub (Disk), 1st Stage Compressor: | | |
| Hub Detail—All P/N's | 72–33–31 | –02, –03, –04 |
| Hub Assembly—All P/N's | 72–33–31 | –02, –03, –04 |
| 2nd Stage Compressor: | | |
| Disk—All P/N's | 72–33–33 | –02 |
| Disk Assembly—All P/N's | 72–33–33 | –02 |
| Disk, 13th Stage Compressor: | | |
| All P/N's | 72–36–47 | –02 |
| HP Turbine Disk, First Stage w/integral Shaft: | | |
| All P/N's | 72–52–04 | –03 |
| HP Turbine, First Stage, w/Separable shaft: | | |
| Rotor Assembly—All P/N's | 72–52–02 | –04 |
| Disk—All P/N's | 72–52–02 | –03 |
| Disk, 2nd Stage Turbine: | | |
| All P/N's | 72–53–16 | –02 |
| Disk, 3rd Stage Turbine: | | |
| All P/N's | 72–53–17 | –02 |
| Disk (Separable), 4th Stage Turbine: | | |
| All P/N's | 72–53–15 | –02 |
| Disk (Integral Disk/Hub), 4th Stage Turbine: | | |
| All P/N's | 72–53–18 | –02 |

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections must be performed using the TLS of the PW JT8D–200 Turbofan Engine Manual.

**Alternative Methods of Compliance**

(c) 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 Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the 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**

(d) 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 accomplished.

**Continuous Airworthiness Maintenance Program**

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)) of this chapter must maintain records of the mandatory inspections that result from revising the TLS of the PW JT8D/09200 Turbofan Engine Manual, and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

**Note 3:** The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the PW JT8D–200 Turbofan Engine Manual.

Issued in Burlington, Massachusetts, on December 31, 2001.

**Jay J. Pardee,**

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

[FR Doc. 02–303 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 98–ANE–43–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

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

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

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Pratt & Whitney JT8D–200 series turbofan engines, that currently requires revisions to the Time Limits Section (TLS) of the manufacturer's Engine Manuals (EMs) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This proposal would modify the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. An FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

**DATES:** Comments must be received by March 8, 2002.

**ADDRESSES:** Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299. 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. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–43–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

### Discussion

On October 16, 2000, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 2000–21–07, Amendment 39–11939 (65 FR 63540, October 24, 2000), to require revisions to the Time Limits Section (TLS) of the Pratt & Whitney (PW) JT8D–200 Turbofan Engine Manual to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

### New Inspection Procedures

Since the issuance of that AD, an FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for additional mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. This proposal would modify the time limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements.

### Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–21–07 to add additional critical life-limited parts for enhanced inspection at each piece-part opportunity.

### Economic Analysis

The FAA estimates that 1,279 engines installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 8 work hours per engine to perform the enhanced inspection for the first stage HP turbine disks. The average labor rate is $60 per work hour. The cost impact of the added inspections per engine is approximately $480 per year, with the approximate total cost for the US fleet of $613,920 per year.

### Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

location provided under the caption **ADDRESSES.**

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39–11939 (65 FR 63540, October 24, 2000 and by adding a new airworthiness directive, to read as follows:

**Pratt & Whitney:** Docket No. 98–ANE–43–AD. Supersedes AD 2000–21–07, Amendment 39–11939.

*Applicability:* Pratt & Whitney (PW) JT8D–200 series turbofan engines, installed on but not limited to McDonnell Douglas MD80 series airplanes.

**Note 1:** This airworthiness directive (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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

**Inspections**

(a) Within the next 30 days after the effective date of this AD, revise the Time Limits Section (TLS) of the JT8D/09200 Turbofan Engine Manual, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

''Critical Life Limited Part Inspection

A. Inspection Requirements:

(1) This section contains the definitions for individual engine piece-parts and the inspection procedures, which are necessary, when these parts are removed from the engine.

(2) It is necessary to do the inspection procedures of the piece-parts in Paragraph B when:

(a) The part is removed from the engine and disassembled to the level specified in paragraph B and

(b) The part has accumulated more than 100 cycles since the last piece part inspection, provided that the part is not damaged or related to the cause of its removal from the engine.

(3) The inspections specified in this section do not replace or make unnecessary other recommended inspections for these parts or other parts.

B. Parts Requiring Inspection.

**Note:** Piece part is defined as any of the listed parts with all the blades removed.

| Description | Engine manual section | Inspection No. |
|---|---|---|
| Hub (Disk), 1st Stage Compressor: | | |
| Hub Detail—All P/N's | 72–33–31 | –02,–03 |
| Hub Assembly—All P/N's | 72–33–31 | –02,–03 |
| Disk, 13th Stage Compressor: All P/N's | 72–36–47 | –02 |
| HP Turbine, First Stage: | | |
| Rotor Assembly—All P/N's | 72–52–02 | –04 |
| Disk—All P/N's | 72–52–02 | –03 |
| Disk, 2nd Stage Turbine: All P/N's | 72–53–16 | –02 |
| Disk, 3rd Stage Turbine: All P/N's | 72–53–17 | –02 |
| Disk, 4th Stage Turbine | 72–53–18 | –02 |

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections must be performed using the TLS of the PW JT8D–200 Turbofan Engine Manual.

**Alternative Methods of Compliance**

(c) 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 Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the 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.

**Ferry Flights**

(d) 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 accomplished.

**Continuous Airworthiness Maintenance Program**

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369(c)] of this chapter must maintain records of the mandatory inspections that result from revising the TLS of the PW JT8D/09200 Turbofan Engine Manual, and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

**Note 3:** The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the PW JT8D–200 Turbofan Engine Manual.

Issued in Burlington, Massachusetts, on December 31, 2001.

**Jay J. Pardee,**

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

[FR Doc. 02–304 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 01–AGL–06]**

## Proposed Modification of Class D Airspace; Bloomington, Monroe County Airport, IN; and Modification of Class E Airspace; Bloomington, Monroe County Airport, IN

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to modify Class D airspace at Bloomington, Monroe County Airport, IN, and modify Class E airspace at Bloomington, Monroe County Airport, IN. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 06, RNAV SIAP to Rwy 17, RNAV SIAP to Rwy 24, and a RNAV SIAP to Rwy 35 have been developed for Monroe County Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the radius of the existing Class D and Class E airspace for Monroe County Airport.

**DATES:** Comments must be received on or before February 11, 2002.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–06, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviatiaon Administation, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proopsed 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 the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 01–AGL–06.'' 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 action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace and Class E airspace at Bloomington, Monroe County Airport, IN, by increasing the radius of the existing Class D airspace and Class E airspace for Monroe County Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, and Class E airspace area are published in paragraph 6005, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, 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 5000 Class D airspace.*

* * * * *

**AGL IN D Bloomington, Monroe County Airport, IN [REVISED]**

Bloomington, Monroe County Airport, IN
(Lat. 39°08′40″ N., long. 86°37′00″ W.)

That airspace extending upward from the surface to and including 3,300 feet MSL within an 4.3-mile radius of the Monroe County Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

**AGL IN E5 Bloomington, Monroe County Airport, IN [REVISED]**

Bloomington, Monroe County Airport, IN
(Lat. 39°08′40″ N., long. 86°37′00″ W.)

That airspace extending upward from 700 Feet Above the surface within a 7.3 mile radius of Monroe County Airport.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 02–252 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 01–AGL–01]**

## Proposed Modification of Class D Airspace; Rockford, IL; Modification of Class E Airspace; Rockford, IL

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to modify Class D airspace at Rockford, IL, and modify Class E airspace at Rockford, IL. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 01, RNAV SIAP to Rwy 7, RNAV (Y) SIAP to Rwy 19, RNAV(Z) SIAP to Rwy 19, RNAV(Y) SIAP to Rwy 25, RNAV(Z) SIAP to Rwy 25 have been developed for the Greater Rockford Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the radius of the existing Class D and Class E airspace for Greater Rockford Airport.

**DATES:** Comments must be received on or before February 11, 2002.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–01, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

**SUPPLEMENTARY INFORMATION:**

### 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 the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 01–AGL–01.'' 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 action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace and Class E airspace at Rockford, IL, by increasing the radius of the existing Class D airspace and Class E airspace for the Greater Rockford Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

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

on a substantial number of small entities under the criteria of the regulatory Flexibility Act.

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, 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 5000 Class D airspace.*

* * * * *

**AGL IL D Rockford, IL [REVISED]**

Greater Rockford Airport, IL
(Lat. 42°11′43″ N., long. 089°05′50″ W.)
Greater Rockford ILS Localizer
(Lat. 42°12′36″ N., long. 089°05′17″ W.)
GILMY LOM
(Lat. 42°06′52″ N., long. 089°05′55″ W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within an 4.6-mile radius of the Greater Rockford Airport and within 1.8 miles each side of the Greater Rockford Runway 36 ILS localizer course, extending south from the 4.6 mile radius to the GILMY LOM.

* * * * *

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

* * * * *

**AGL IL E5 Rockford, IL [REVISED]**

Greater Rockford Airport, IL
(Lat. 42°11′43″ N., long. 089°05′50″ W.)
GILMY LOM
(Lat. 42°06′52″ N., long. 089°05′55″ W.)

That airspace extending upward from 700 feet above the surface within a 7.1 mile radius of the Greater Rockford airport and within 7 miles east and 4.4 miles west of the Rockford ILS localizer south course, extending from the airport to 10.4 miles south of the GILMY LOM.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

**Nancy B. Shelton,**

*Manager, Air Traffic Division.*

[FR Doc. 02–249 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 01–AGL–11]**

## Proposed Modification of Class E Airspace; Manistee, MI

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to modify Class E airspace at Manistee, MI. A VHF Omnidirectional (VOR) Standard Instrument Approach Procedure (SIAP) Runway (Rwy) 09, and VOR SIAP Rwy 27 have been developed for Manistee County-Blacker Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing this approach. This action would change the extensions to the existing Class E airspace for Manistee County-Blacker Airport.

**EFFECTIVE DATES:** Comments must be received on or before February 11, 2002.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–11, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

**SUPPLEMENTARY INFORMATION:**

**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 the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 01–AGL–11.'' 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 action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Manistee, MI, by changing the extensions to the existing Class E airspace for Manistee County-Blacker Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charters. Class E airspace areas extending upward from 700 feet or more

above the surface are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL MI E5 Manistee, MI [REVISED]**

Manistee County-Blacker, MI

(Lat. 44°16′21″ N., long. 86°14′02″ W.)
Manistee VOR/DME
(Lat. 44°16′14″ N., long. 86°15′15″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Manistee County-Blacker Airport and within 4 miles north and 8 miles south of the Manistee VOR/DME 285° radial extending from the 7 mile radius to 16 miles west of the VOR/DME, and within 4 miles south and 8 miles north of the Manistee VOR/DME 086° radial extending from the 7-mile radius to 16 miles east of the VOR/DME.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 02–251 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 00–AGL–08]**

## Proposed Modification of Class E Airspace; Frankfort, MI

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to modify Class E airspace Frankfort, MI. A VHF Omnidirectional Range-A (VOR–A) Standard Instrument Approach Procedure (SIAP) has been developed for Frankfort Dow Memorial Field, Frankfort, MI. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing this approach. This action would add an extension to the existing Class E airspace for Frankfort Dow Memorial Field Airport.

**DATES:** Comments must be received on or before February 11, 2002.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 00–AGL–08, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

**SUPPLEMENTARY INFORMATION:**

**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 the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AGL–08.'' 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 action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Frankfort, MI, by adding an extension to the existing Class E airspace for Frankfort Dow Memorial Field Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL MI E5 Frankfort, MI [REVISED]**

Frankfort Dow Memorial Field Airport, MI
(Lat. 44°37′30″ N., long. 86°12′33″ W.)

That airspace extending upward from 700 feet above the surface within an 6.4-mile radius of the Frankfort Dow Memorial Field Airport, and within 2 miles each side of the Manistee VOR/DME 186° radial extending from the 6.3 mile radius to 9.8 miles south of the airport.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 02–250 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 01–AGL–02]**

## Proposed Modification of Class E Airspace; Greenville, MI

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to modify Class E airspace at Greenville, MI. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 10, and an RNAV SIAP Rwy 28 has been developed for Greenville Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would increase the radius of the existing controlled airspace for Greenville Municipal Airport.

**DATES:** Comments must be received on or before February 11, 2002.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–02, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

**SUPPLEMENTARY INFORMATION:**

**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 the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 01–AGL–02.'' 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 action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal

Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Greenville, MI, by increasing the radius of the controlled airspace for Greenville Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

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

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL MI ES Greenville, MI [REVISED]**

Greenville Municipal Airport, MI
(Lat. 43°08′32″ N., long. 85°15′16″ W.)

That airspace extending upward from 700 feet above the surface within an 7.1-mile radius of the Greenville Municipal Airport, MI.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 02–248 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 46

**[REG–125450–01]**

**RIN 1545–AY93**

## Liability For Insurance Premium Excise Tax

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

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed amendments to the regulations relating to liability for the insurance premium excise tax. This document affects persons who make, sign, issue, or sell a policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer. This document also provides a notice of public hearing on these proposed regulations.

**DATES:** Written or electronic comments, requests to speak and outlines of topics to be discussed at the public hearing scheduled for March 19, 2002, at 10 a.m. must be received by February 26, 2002.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG–125450–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–125450–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/regslist.html.* The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Amanda Ehrlich, (202) 622–3880; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

The insurance premium excise tax imposed by section 4371 originated as a stamp tax on certain insurance policies in the Act of February 24, 1919, Title IX, section 1100. This provision was re-enacted unchanged in the Revenue Act of 1924, as section 800; in the Revenue Act of 1926, as section 800; and in the Internal Revenue Code of 1939 (1939 Code), as section 1804. Section 1809(a) of the 1939 Code required the tax imposed by section 1804 to be paid ''by any person who makes, signs, issues, [or] sells * * * any of the documents [or] instruments * * * [including insurance policies subject to tax] * * * or for whose use or benefit the same are made, signed, issued, [or] sold * * *.'' Section 1809(b)(1) of the 1939 Code required the tax to be paid by the purchase of stamps to be affixed to taxable documents.

The insurance premium excise tax imposed by section 1804 of the 1939 Code was reenacted in the Internal Revenue Code of 1954 (1954 Code) as section 4371. Section 1809(a) and (b)(1) of the 1939 Code (relating to who is

liable for the tax and how it is to be paid) were reenacted as sections 4383 and 4374 of the 1954 Code, respectively. Section 4383 of the 1954 Code was renumbered as section 4384 by the Excise Technical Changes Act of 1958.

Section 4374 was amended in 1965 to authorize the Secretary or the Secretary's delegate to provide by regulations that the tax imposed by section 4371 shall be paid on the basis of a return, instead of by stamp. Excise Tax Reduction Act of 1965, Public Law 89–44, section 804(a), 79 Stat. 136, 160 (1965). Pursuant to this statutory authorization, the Secretary promulgated 26 CFR 46.4374–1 in 1970, which provides that the tax imposed by section 4371 shall be paid on the basis of a return and remitted by the person who pays the premium to a foreign insurer or reinsurer. TD 7023; 1970–1 C.B. 233, 236. For these purposes, the person who makes payment of the premium is the resident person who actually transferred the money, check, or its equivalent to the foreign insurer or reinsurer. The regulation further provided a reference to section 4384 for purposes of determining the persons liable for the tax. § 46.4374–1(a).

The Tax Reform Act of 1976 (1976 Act) combined sections 4374 and 4384 into a single Code section, and eliminated any references therein to the payment of the tax by stamps. Tax Reform Act of 1976, Public Law 94–455, section 1904(a)(12), 90 Stat. 1520, 1812–14 (1976). The 1976 Act repealed section 4374, which had required payment of the tax by stamps or by return pursuant to regulations. It renumbered section 4384 as section 4374, which imposes liability for the tax. Finally, the 1976 Act amended the new section 4374 to require payment of the tax by return. The regulations under section 4374 have not been changed to reflect the 1976 statutory amendments.

Some taxpayers have taken the position, contrary to the statute, that § 46.4374–1 (which does not reflect the 1976 legislative changes) imposes liability and requires payment of tax only if a premium is paid by a resident of the United States. This interpretation ignores the cross-reference in § 46.4374–1(a) to prior Code section 4384 for purposes of determining the persons who are liable for the tax. The proposed regulations revise § 46.4374–1(a) to conform the regulations to the 1976 statutory amendments by providing that any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold, is liable for the tax imposed by section 4371. Section 46.4374–1(c) also provides that the tax imposed by section 4371 shall be paid on the basis of a return by the person who makes payment of the premium to a foreign insurer or reinsurer or to any nonresident agent, solicitor, or broker. If the tax is not paid by the person who paid the premium, the tax imposed by section 4371 shall be paid on the basis of a return by any person who makes, signs, issues, or sells any of the documents or instruments subject to the tax imposed by section 4371, or for whose use or benefit such document or instrument is made, signed, issued, or sold.

**Proposed Effective Date**

These regulations are proposed to apply to premiums paid on or after the date final regulations are published in the **Federal Register**.

**Special Analysis**

It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. Treasury and the IRS request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be made available for public inspection and copying.

A public hearing has been scheduled for March 19, 2002 at 10 a.m., in room 4718, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to this hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by February 26, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting Information**

The principal author of these regulations is Amanda Ehrlich of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 46**

Excise taxes, Insurance, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 46 is proposed to be amended as follows:

## PART 46—EXCISE TAX ON POLICIES ISSUED BY FOREIGN INSURERS AND OBLIGATIONS NOT IN REGISTERED FORM

**Paragraph 1.** The authority citation for part 46 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**Par. 2.** Section 46.4374–1 is revised to read as follows:

### § 46.4374–1 Liability for tax.

(a) *In general.* Any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold, shall be liable for the tax imposed by section 4371.

(b) *When liability for tax attaches.* The liability for the tax imposed by section 4371 shall attach at the time the premium payment is transferred to the foreign insurer or reinsurer (including transfers to any bank, trust fund, or similar recipient, designated by the foreign insurer or reinsurer), or to any nonresident agent, solicitor, or broker. A person required to pay tax under this section may remit such tax before the time the tax attaches if he keeps records consistent with such practice.

(c) *Payment of tax.* The tax imposed by section 4371 shall be paid on the basis of a return by the person who makes payment of the premium to a foreign insurer or reinsurer or to any nonresident agent, solicitor, or broker. If the tax is not paid by the person who paid the premium, the tax imposed by section 4371 shall be paid on the basis of a return by any person who makes, signs, issues, or sells any of the documents or instruments subject to the

tax imposed by section 4371, or for whose use or benefit such document or instrument is made, signed, issued, or sold.

(d) *Penalty for failure to pay tax.* Any person who fails to comply with the requirements of this section with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of tax. (See section 7270.)

(e) *Effective date.* This section is applicable for premiums paid on or after the date final regulations are published in the **Federal Register**.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 02–325 Filed 1–4–02; 8:45 am]

**BILLING CODE 4830–01–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

**[Docket No. FEMA–B–7423]**

### Proposed Flood Elevation Determinations

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

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make determinations of BFE and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

**National Environmental Policy Act**

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

**Regulatory Flexibility Act**

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

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

**Executive Order 12612, Federalism**

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

**Executive Order 12778, Civil Justice Reform**

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

**List of Subjects in 44 CFR Part 67**

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

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

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

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, § *67.4*

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

IOWA.—JOHNSON COUNTY, IOWA AND INCORPORATED AREAS

| Flooding source(s) | Location of referenced elevation | Elevation feet *(NGVD) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Iowa River | Approximately 10,000 feet upstream of the confluence with Snyder Creek. | *636 | *636 | Johnson County, City of Iowa City and City of Coralville. |
| | Just downstream of U.S. Highway 6 | *643 | *644 | |
| | Approximately 4,000 feet upstream of Coralville Dam | *657 | *657 | |
| Ralston Creek | Just upstream of the North Branch Ralston Creek Detention Dam. | *699 | *700 | City of Iowa City and Johnson County. |
| | Approximately 500 feet upstream of Scott Boulevard .. | None | *731 | |

IOWA.—JOHNSON COUNTY, IOWA AND INCORPORATED AREAS—Continued

| Flooding source(s) | Location of referenced elevation | Elevation feet *(NGVD) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| South Branch Ralston Creek ... | Just upstream of Scott Boulevard ..... | None | *723 | City of Iowa City and Johnson County. |
| | Approximately 3,700 feet upstream of Scott Boulevard | None | *727 | |
| North Branch Snyder Creek .... | Approximately 4,550 feet downstream of U.S. Route 6 | None | *650 | City of Iowa City and Johnson County. |
| | Approximately 2,050 feet upstream of Chicago Rock Island and Pacific Railroad. | None | *668 | |
| Clear Creek ..... | At confluence with Iowa River ..... | *653 | *654 | Johnson County, City of Iowa City and City of Tiffin. |
| | Approximately 4,100 feet upstream of Camp Cardinal Road. | *667 | *668 | |
| | Approximately 5,300 feet downstream of Interstate 80 | *671 | *672 | |
| Willow Creek ..... | At confluence with Iowa River ..... | *641 | *642 | City of Iowa City and Johnson County. |
| | Approximately 650 feet upstream of U.S. Route 218 ... | None | *721 | |
| West Branch Snyder Creek ..... | At confluence with North Branch Snyder Creek ..... | None | *662 | Johnson County and City of Iowa City. |
| | Approximately 900 feet upstream of The West Spur Railroad. | None | *673 | |
| Middle Branch Willow Creek ... | At confluence with Willow Creek ..... | None | *677 | City of Iowa City. |
| | Approximately 300 feet upstream of Mormon Trek Boulevard. | None | *690 | |

#Depth in feet above ground.

**ADDRESSES:**

*Johnson County, Iowa and Incorporated Areas:*

Maps are available for inspection at Johnson County and Planning and Zone, 913 South Dubuque Street, Iowa City, Iowa

Send comments to Ms. Sally Stutsman, Chairperson, Johnson County, Board of Supervisors, Iowa City, Iowa 52240

*City of Iowa City, Iowa:*

Maps are available for inspection at the County Courthouse, P.O. Box325, Allison, Iowa

Send comments to The Honorable Ernest W. Lehman, Mayor, 410 East Washington Street, Iowa City, Iowa 52240

*City of Tiffin, Iowa:*

Maps are available for inspection at Tiffin City Hall, 211 Main Street, Tiffin, Iowa

Send comments to the Honorable Glenn Potter, Mayor, P.O. Box 196, Tiffin, Iowa 52430

*City of Coralville:*

Maps are available for inspection at the Coralville City Hall, 1512 17th Street, Coralville, Iowa

Send comments to the Honorable Jim Fausett, Mayor, City of Coralville, 1512 7th Street, P.O. Box 5127 Coralville, City of Iowa 52241

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

Dated: December 19, 2001.

**Robert F. Shea,**

*Acting Administrator, Federal Insurance and Mitigation Administration.*

[FR Doc. 02–320 Filed 1–4–02; 8:45 am]

**BILLING CODE 6718–04–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Parts 529, 531, 533, 535, 537, 538, 541, 542, 543, 544, 551, 552, 553, 554, 555, 556, 557, 564, 565, 566, 567, 568, 569, 570, 572, 573, 574, 575, 576, 577, 578, 579

**[Docket No. NHTSA–01–11227]**

### Federal Motor Vehicle Safety Standards (FMVSS); Small Business Impacts of Motor Vehicle Safety

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

**ACTION:** Notice of regulatory review; Request for comments.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) seeks comments on the economic impact of its regulations on small entities. As required by Section 610 of the Regulatory Flexibility Act, we are attempting to identify rules that may have a significant economic impact on a substantial number of small entities. We also request comments on ways to make these regulations easier to read and understand. The focus of this notice is rules that specifically relate to passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, incomplete vehicles, motorcycles, and motor vehicle equipment.

**DATES:** Comments must be received on or before January 25, 2002.

**ADDRESSES:** You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590. You may call Docket Management at: (202) 366–9324. You may visit the Docket from 10:00 am to 5:00 pm Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Nita Kavalauskas, Office of Regulatory Analysis and Evaluation, Office of Plans and Policy, National Highway Traffic Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC, 20590. Telephone: (202) 366–2584. Facsimile (fax): (202) 366–2559.

**SUPPLEMENTARY INFORMATION:**

## I. Section 610 of the Regulatory Flexibility Act

### *A. Background and Purpose*

Section 610 of the Regulatory Flexibility Act of 1980 (Public Law 96–354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), requires agencies to conduct periodic reviews of final rules that have a significant economic impact on a substantial number of small business entities. The purpose of the reviews is to determine whether such rules should be continued without change, amended, or rescinded, consistent with the objectives of applicable statutes, to minimize any significant economic impact of the rules on a substantial number of such small entities.

### *B. Review Schedule*

The Department of Transportation (DOT) published its Semiannual Regulatory Agenda on November 22, 1999, listing in Appendix D (64 FR 64684) those regulations that each operating administration will review under section 610 during the next 12 months. Appendix D also contains DOT's 10-year review plan for all of its existing regulations.

The National Highway Traffic Safety Administration (NHTSA, ''we'') has divided its rules into 10 groups by subject area. Each group will be reviewed once every 10 years, undergoing a two-stage process-an Analysis Year and a Review Year. For purposes of these reviews, a year will coincide with the fall-to-fall publication schedule of the Semiannual Regulatory Agenda. Thus, Year 1 (1998) began in the fall of 1998 and ended in the fall of 1999; Year 2 (1999) began in the fall of 1999 and ended in the fall of 2000; and so on.

During the Analysis Year, we will request public comment on and analyze each of the rules in a given year's group to determine whether any rule has a significant impact on a substantial number of small entities and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. In each fall's Regulatory Agenda, we will publish the results of the analyses we completed during the previous year. For rules that have subparts, or other discrete sections of rules that do have a significant impact on a substantial number of small entities, we will announce that we will be conducting a formal section 610 review during the following 12 months.

The section 610 review will determine whether a specific rule should be revised or revoked to lessen its impact on small entities. We will consider: (1) The continued need for the rule; (2) the nature of complaints or comments received from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other federal rules or with state or local government rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. At the end of the Review Year, we will publish the results of our review.

The schedule has been revised from its listing in the Semiannual Regulatory Agenda on November 22, 1999. A major revision to parts 591 through 594 has been proposed. Thus, we deemed it appropriate to delay our small business impact review of these parts from year 3 to year 8, and move the other regulations forward one year.

The following table shows the 10-year analysis and review schedule:

NHTSA SECTION 610 REVIEW PLAN[1]

| Year | Regulations to be reviewed | Analysis year | Review year |
|---|---|---|---|
| 1 | 49 CFR parts 501 through 526 and 571.213 | 1998 | 1999 |
| 2 | 49 CFR 571.131, 571.217, 571.220, 571.221, and 571.222 | 1999 | 2000 |
| 3 | 49 CFR 571.101 through 571.110 and 571.135 | 2000 | 2001 |
| 4 | 49 CFR parts 529 through 579, except part 571 | 2001 | 2002 |
| 5 | 49 CFR 571.111 through 571.129 and parts 580 through 590 | 2002 | 2003 |
| 6 | 49 CFR 571.201 through 571.212 | 2003 | 2004 |
| 7 | 49 CFR 571.214 through 571.219, except 571.217 | 2004 | 2005 |
| 8 | 49 CFR parts 591 through 594 | 2005 | 2006 |
| 9 | 49 CFR 571.223 through 571.304, part 500 and new parts and subparts under 49 CFR | 2006 | 2007 |
| 10 | 23 CFR parts 1200 and 1300 and new parts and subparts under 23 CFR | 2007 | 2008 |

[1] Revised schedule.

### *C. Regulations Under Analysis*

During Year 4 (2001), the Analysis Year, we will conduct a preliminary assessment of the following sections of 49 CFR Parts 529 through 579, except Part 571:

| Section | Title |
|---|---|
| 529 | Manufacturers of multistage automobiles |
| 531 | Passenger automobile average fuel economy standards |
| 533 | Light truck fuel economy standards |
| 535 | 3-year carryforward and carryback of credits for light trucks |
| 537 | Automotive fuel economy reports |
| 538 | Manufacturing incentives for alternative fuel vehicles |
| 541 | Federal motor vehicle theft prevention standard |
| 542 | Procedures for selecting lines to be covered by the theft prevention standard |
| 543 | Exemption from vehicle theft prevention standard |
| 544 | Insurer reporting requirements |
| 551 | Procedural rules |
| 552 | Petitions for rulemaking, defect, and noncompliance orders |
| 553 | Rulemaking procedures |
| 554 | Standards enforcement and defects investigation |

| Section | Title |
|---|---|
| 555 | Temporary exemption from motor vehicle safety and bumper standards. |
| 556 | Exemption for inconsequential defect or non-compliance. |
| 557 | Petitions for hearings on notification and remedy of defects. |
| 564 | Replaceable light source information. |
| 565 | Vehicle identification number requirements. |
| 566 | Manufacturer identification. |
| 567 | Certification. |
| 568 | Vehicles manufactured in two or more stages. |
| 569 | Regrooved tires. |
| 570 | Vehicle in use inspection standards. |
| 572 | Anthropomorphic test devices. |
| 573 | Defect and noncompliance reports. |
| 574 | Tire identification and recordkeeping. |
| 575 | Consumer information regulations. |
| 576 | Record retention. |
| 577 | Defect and noncompliance notification. |
| 578 | Civil penalties. |
| 579 | Defect and noncompliance responsibility. |

We are seeking comments on whether any requirements in parts 529 through 579, except part 571 have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. Business entities are generally defined as small businesses by Standard Industrial Classification (SIC) code, for the purposes of receiving Small Business Administration (SBA) assistance. Size standards established by SBA in 13 CFR 121.201 are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small. If your business or organization is a small entity and if any of the requirements in parts 529 through 579, except part 571 have a significant economic impact on your business or organization, please submit a comment to explain how and to what degree these rules affect you, the extent of the economic impact on your business or organization, and why you believe the economic impact is significant.

If the agency determines that there is a significant economic impact on a substantial number of small entities, it will ask for comment in a subsequent notice during the Review Year on how these impacts could be reduced without reducing safety.

**II. Plain Language**

*A. Background and Purpose*

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

*B. Review Schedule*

In conjunction with our section 610 reviews, we will be performing plain language reviews over a ten-year period on a schedule consistent with the section 610 review schedule. We will review parts 529 through 579, except part 571 to determine if these regulations can be reorganized and/or rewritten to make them easier to read, understand, and use. We encourage interested persons to submit draft regulatory language that clearly and simply communicates regulatory requirements, and other recommendations, such as for putting information in tables that may make the regulations easier to use.

**Comments**

*How Do I Prepare and Submit Comments?*

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21.) We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.** Comments may also be submitted to the docket electronically by logging onto the Docket Management System website at *http://dms.dot.gov*. Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing your comments electronically.

*How Can I be Sure That my Comments Were Received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

*How Do I Submit Confidential Business Information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential

business information, to the Chief Counsel, NHTSA, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

*Will the Agency Consider Late Comments?*

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

*How Can I Read the Comments Submitted by Other People?*

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

**William H. Walsh,**

*Associate Administrator for Plans and Policy.*

[FR Doc. 02–154 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 538

**[Docket No. NHTSA–2001–10774]**

**RIN 2127–AI41**

## Automotive Fuel Economy Manufacturing Incentives for Alternative FuelVehicles

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of intent to issue a notice of proposed rulemaking (NPRM).

**SUMMARY:** To provide an incentive for the production of vehicles that can operate on certain alternative fuels as well as on regular petroleum fuels, Congress established a special procedure for calculating the fuel economy of those vehicles for the purpose of determining compliance with the Corporate Average Fuel Economy standards. This procedure increases the fuel economy attributed to such ''dual-fueled'' vehicles. By statute, the incentive is available through the 2004 model year and may be extended by up to four additional model years through rulemaking.

The purpose of this document is to announce the intention to issue a proposal to extend the availability of the incentive for one or more additional model years.

**FOR FURTHER INFORMATION CONTACT:** The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590:

For non-legal issues: Mr. Kenneth Katz, Consumer Programs Division, Office of Planning and Consumer Programs, NPS–32, Room 5320, telephone (202) 366–4936, facsimile (202) 493–2290.

For legal issues: Otto Matheke, Office of the Chief Counsel, NCC–20, Room 5219, telephone (202) 366–5263, facsimile (202) 366–3820.

**SUPPLEMENTARY INFORMATION:**

### Background

Congress created the Corporate Average Fuel Economy (CAFE) program when it enacted the Energy Policy and Conservation Act of 1975 (Public Law 94–163; Dec. 22, 1975). The CAFE statutory provisions, now codified in chapter 329 of Title 49 of the United States Code (49 U.S.C. 32901 *et seq.*), mandate fuel economy standards that must be met by vehicle manufacturers. These standards apply separately to each manufacturer's annual fleet of passenger cars and to its annual fleet of light trucks under 8,500 lbs. gross vehicle weight rating, instead of applying to individual vehicles. Each manufacturer's average fuel economy is determined by the Environmental Protection Agency in accordance with procedures set forth in 49 U.S.C. 32904. Those procedures provide for determining the fuel economy of a manufacturer's model types produced in a particular model year and calculating a weighted fuel economy average for the manufacturer.

Congress amended the CAFE provisions when it enacted the Alternative Motor Fuels Act of 1988 (''AMFA'') (Public Law 100–94; October 14, 1988). The purposes of AMFA were to encourage the development and use of methanol, ethanol and natural gas as transportation fuels and to promote the production of alternative fuel vehicles (AFVs). For the latter purpose, AMFA provides special procedures for calculating the fuel economy of ''dedicated'' alternative fuel vehicles and ''dual-fueled'' vehicles that meet specified eligibility criteria. ''Dedicated vehicles'' are cars or light trucks designed to operate exclusively either on natural gas or on a methanol or ethanol fuel mixture composed of at least 85 percent of either substance. ''Dual-fueled vehicles'' have the capability to operate on conventional petroleum and the capability to operate on an alternative fuel. Most dual-fueled vehicles produced to date are capable of operating on E85 (a blend of 85% ethanol and 15% gasoline) and either gasoline or diesel. The special calculation procedures used in determining the fuel economy of alternative fuel vehicles substantially increase the fuel economy ratings of these vehicles.

In creating the incentive program for dual-fueled vehicles, Congress expressly limited both the extent to which a manufacturer can avail itself of the incentive in any model year as well as the duration of the incentives.[1] For the 1993–2004 model years, the maximum increase in CAFE available to a

[1] Congress did not apply either of these limitations to the incentive program for dedicated vehicles.

manufacturer for producing qualifying dual-fueled vehicles is 1.2 miles per gallon.

AMFA provides that the incentive is available through the end of the 2004 model year. In addition, AMFA provides that the agency may either extend the program to model years beyond the end of the 2004 model year or allow the program to terminate at that time. An extension of up to four model years is authorized. If the program were extended, the maximum increase in CAFE that could be attributed to the incentive would be limited to .9 miles per gallon in any of those model years.

AMFA further directs that NHTSA evaluate the dual-fuel incentive program and provide a report to Congress analyzing the success of the incentive program and preliminary conclusion regarding extension of the program beyond the 2004 model year.

**Forthcoming Actions**

In the near future, the agency plans to issue the report to Congress and a proposal to extend the incentive program for one or more additional model years.

Issued on: December 31, 2001.

**Noble Bowie,**

*Director, Office of Planning and Consumer Programs.*

[FR Doc. 01–32260 Filed 12–31–01; 3:21 pm]

BILLING CODE 4910–59–P

# Proposed Rules

Federal Register
Vol. 67, No. 4
Monday, January 7, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 330

**[Docket No. 95–095–3]**

**RIN 0579–AA80**

### Plant Pest Regulations; Update of Current Provisions

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

**ACTION:** Notice of reopening and extension of comment period.

**SUMMARY:** We are reopening and extending the comment period for our proposed rule that would revise our regulations regarding the movement of plant pests by adding risk-based criteria for determining the plant pest status of organisms, establishing a notification process that could be used as an alternative to the current permitting system, providing for the environmental release of organisms for the biological control of weeds, and updating the text of the subpart. This action will allow interested persons additional time to prepare and submit comments.

**DATES:** We invite you to comment on Docket No. 95–095–2. We will consider all comments we receive by that are postmarked, delivered, or e-mailed by February 6, 2002.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 95–095–2, Regulatory Analysis and Development, PPD,APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 95–095–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 95–095–2'' on the subject line.

You may read any comments that we receive on Docket No. 95–095–2 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street andIndependence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert Flanders, Risk Assessment Branch Chief, or Ms. Deborah Knott, Permits Branch Chief, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; phone 301–734–5930 (Dr. Flanders) or 301–734–5055 (Ms. Knott).

**SUPPLEMENTARY INFORMATION:**

#### Background

On October 9, 2001, we published in the **Federal Register** (66 FR 51340–51358, Docket No. 95–095–2) a proposal to revise our regulations regarding the movement of plant pests by adding risk-based criteria for determining the plant pest status of organisms, establishing a notification process that could be used as an alternative to the current permitting system, providing for the environmental release of organisms for the biological control of weeds, and updating the text of the subpart.

Comments on the proposed rule were required to be received on or before December 10, 2001. We are reopening and extending the comment period on Docket No. 95–095–2 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between December 11, 2001(the day after the close of the original comment period) and the date of this notice.

In addition, we would like to point out that the **DATES** and **ADDRESSES** sections of this notice contain information regarding the submission of comments that was not contained in the October 9, 2001, proposed rule. Specifically, we are now accepting comments via e-mail and will consider comments submitted by postal mail that are postmarked rather than received in our offices by the close of the comment period.

**Authority:** 7 U.S.C. 450, 2260, 7711, 7712, 7714, 7718, 7731, 7734, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 27th day of December, 2001.

**Kevin Shea,**

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

[FR Doc. 02–263 Filed 1–4–02; 8:45 am]

**BILLING CODE 3410–34–U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 98–ANE–48–AD]**

**RIN 2120–AA64**

### Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

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

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

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Pratt & Whitney JT8D series turbofan engines, that currently requires revisions to the Time Limits Section (TLS) of the manufacturer's Engine Manuals (EMs) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This proposal would modify the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. An FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures.

The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

**DATES:** Comments must be received by March 8, 2002.

**ADDRESSES:** Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299. 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. Comments may be inspected at this location by appointment between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–43–AD.'' The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

**Discussion**

On October 16, 2000, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 2000–21–08, Amendment 39–11940 (65 FR 65731, November 2, 2000), to require revisions to the Time Limits Section (TLS) of the Pratt & Whitney (PW) JT8D–200 Turbofan Engine Manual to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

**New Inspection Procedures**

Since the issuance of that AD, an FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for additional mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. This proposal would modify the time limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements.

**Proposed Actions**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–21–08 to add additional critical life-limited parts for enhanced inspection at each piece-part opportunity.

**Economic Analysis**

The FAA estimates that 5821 engines installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 8 work hours per engine to perform the enhanced inspection for the first stage HP turbine disks. The average labor rate is $60 per work hour. The cost impact of the added inspections per engine is approximately $480 per year, with the approximate total cost for the US fleet of $2,794,080 per year.

**Regulatory Impact**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39–11940 (65 FR 65731, November 2, 2000 and by adding a new airworthiness directive, to read as follows:

**Pratt & Whitney:** Docket No. 98–ANE–48–AD. Supersedes AD 2000–21–08, Amendment 39–11940.

*Applicability:* Pratt & Whitney (PW) JT8D–200 series turbofan engines, installed on but not limited to McDonnell Douglas MD80 series airplanes.

**Note 1:** This airworthiness directive (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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

**Inspections**

(a) Within the next 30 days after the effective date of this AD, revise the Time Limits Section (TLS) of the JT8D/09200 Turbofan Engine Manual, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following: ''Critical Life Limited Part Inspection

*A. Inspection Requirements*

(1) This section has the definitions for individual engine piece parts and the inspection procedures which are necessary when these parts are removed from the engine.

(2) It is necessary to do the inspection procedures of the piece parts in paragraph B when:

(a) The part is removed from the engine and disassembled to the level specified in paragraph B and

(b) The part has accumulated more than 100 cycles since the last piece part inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

(3) The inspections specified in this paragraph do not replace or make not necessary other recommended inspections for these parts or other parts.

*B. Parts Requiring Inspection*

**Note:** Piece part is defined as any of the listed parts with all the blades removed.

| Description | Section | Inspection |
|---|---|---|
| Hub (Disk), 1st Stage Compressor: | | |
| Hub Detail—All P/N's | 72–33–31 | –02, –03, –04 |
| Hub Assembly—All P/N's | 72–33–31 | –02, –03, –04 |
| 2nd Stage Compressor: | | |
| Disk—All P/N's | 72–33–33 | –02 |
| Disk Assembly—All P/N's | 72–33–33 | –02 |
| Disk, 13th Stage Compressor: | | |
| All P/N's | 72–36–47 | –02 |
| HP Turbine Disk, First Stage w/integral Shaft: | | |
| All P/N's | 72–52–04 | –03 |
| HP Turbine, First Stage, w/Separable shaft: | | |
| Rotor Assembly—All P/N's | 72–52–02 | –04 |
| Disk—All P/N's | 72–52–02 | –03 |
| Disk, 2nd Stage Turbine: | | |
| All P/N's | 72–53–16 | –02 |
| Disk, 3rd Stage Turbine: | | |
| All P/N's | 72–53–17 | –02 |
| Disk (Separable), 4th Stage Turbine: | | |
| All P/N's | 72–53–15 | –02 |
| Disk (Integral Disk/Hub), 4th Stage Turbine: | | |
| All P/N's | 72–53–18 | –02 |

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections must be performed using the TLS of the PW JT8D–200 Turbofan Engine Manual.

**Alternative Methods of Compliance**

(c) 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 Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the 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**

(d) 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 accomplished.

**Continuous Airworthiness Maintenance Program**

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)) of this chapter must maintain records of the mandatory inspections that result from revising the TLS of the PW JT8D/09200 Turbofan Engine Manual, and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

**Note 3:** The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the PW JT8D–200 Turbofan Engine Manual.

Issued in Burlington, Massachusetts, on December 31, 2001.

**Jay J. Pardee,**

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

[FR Doc. 02–303 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 98–ANE–43–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

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

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

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Pratt & Whitney JT8D–200 series turbofan engines, that currently requires revisions to the Time Limits Section (TLS) of the manufacturer's Engine Manuals (EMs) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This proposal would modify the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. An FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

**DATES:** Comments must be received by March 8, 2002.

**ADDRESSES:** Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299. 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. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–43–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

### Discussion

On October 16, 2000, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 2000–21–07, Amendment 39–11939 (65 FR 63540, October 24, 2000), to require revisions to the Time Limits Section (TLS) of the Pratt & Whitney (PW) JT8D–200 Turbofan Engine Manual to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

### New Inspection Procedures

Since the issuance of that AD, an FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for additional mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. This proposal would modify the time limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements.

### Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–21–07 to add additional critical life-limited parts for enhanced inspection at each piece-part opportunity.

### Economic Analysis

The FAA estimates that 1,279 engines installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 8 work hours per engine to perform the enhanced inspection for the first stage HP turbine disks. The average labor rate is $60 per work hour. The cost impact of the added inspections per engine is approximately $480 per year, with the approximate total cost for the US fleet of $613,920 per year.

### Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

location provided under the caption **ADDRESSES.**

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39–11939 (65 FR 63540, October 24, 2000 and by adding a new airworthiness directive, to read as follows:

**Pratt & Whitney:** Docket No. 98–ANE–43–AD. Supersedes AD 2000–21–07, Amendment 39–11939.

*Applicability:* Pratt & Whitney (PW) JT8D–200 series turbofan engines, installed on but not limited to McDonnell Douglas MD80 series airplanes.

**Note 1:** This airworthiness directive (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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

**Inspections**

(a) Within the next 30 days after the effective date of this AD, revise the Time Limits Section (TLS) of the JT8D/09200 Turbofan Engine Manual, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

''Critical Life Limited Part Inspection

A. Inspection Requirements:

(1) This section contains the definitions for individual engine piece-parts and the inspection procedures, which are necessary, when these parts are removed from the engine.

(2) It is necessary to do the inspection procedures of the piece-parts in Paragraph B when:

(a) The part is removed from the engine and disassembled to the level specified in paragraph B and

(b) The part has accumulated more than 100 cycles since the last piece part inspection, provided that the part is not damaged or related to the cause of its removal from the engine.

(3) The inspections specified in this section do not replace or make unnecessary other recommended inspections for these parts or other parts.

B. Parts Requiring Inspection.

**Note:** Piece part is defined as any of the listed parts with all the blades removed.

| Description | Engine manual section | Inspection No. |
|---|---|---|
| Hub (Disk), 1st Stage Compressor: | | |
| Hub Detail—All P/N's | 72–33–31 | –02,–03 |
| Hub Assembly—All P/N's | 72–33–31 | –02,–03 |
| Disk, 13th Stage Compressor: All P/N's | 72–36–47 | –02 |
| HP Turbine, First Stage: | | |
| Rotor Assembly—All P/N's | 72–52–02 | –04 |
| Disk—All P/N's | 72–52–02 | –03 |
| Disk, 2nd Stage Turbine: All P/N's | 72–53–16 | –02 |
| Disk, 3rd Stage Turbine: All P/N's | 72–53–17 | –02 |
| Disk, 4th Stage Turbine | 72–53–18 | –02 |

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections must be performed using the TLS of the PW JT8D–200 Turbofan Engine Manual.

**Alternative Methods of Compliance**

(c) 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 Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the 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.

**Ferry Flights**

(d) 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 accomplished.

**Continuous Airworthiness Maintenance Program**

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369(c)] of this chapter must maintain records of the mandatory inspections that result from revising the TLS of the PW JT8D/09200 Turbofan Engine Manual, and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

**Note 3:** The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the PW JT8D–200 Turbofan Engine Manual.

Issued in Burlington, Massachusetts, on December 31, 2001.

**Jay J. Pardee,**

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

[FR Doc. 02–304 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 01–AGL–06]**

## Proposed Modification of Class D Airspace; Bloomington, Monroe County Airport, IN; and Modification of Class E Airspace; Bloomington, Monroe County Airport, IN

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to modify Class D airspace at Bloomington, Monroe County Airport, IN, and modify Class E airspace at Bloomington, Monroe County Airport, IN. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 06, RNAV SIAP to Rwy 17, RNAV SIAP to Rwy 24, and a RNAV SIAP to Rwy 35 have been developed for Monroe County Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the radius of the existing Class D and Class E airspace for Monroe County Airport.

**DATES:** Comments must be received on or before February 11, 2002.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–06, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviatiaon Administation, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proopsed 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 the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 01–AGL–06.'' 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 action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace and Class E airspace at Bloomington, Monroe County Airport, IN, by increasing the radius of the existing Class D airspace and Class E airspace for Monroe County Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, and Class E airspace area are published in paragraph 6005, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, 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 5000 Class D airspace.*

* * * * *

**AGL IN D Bloomington, Monroe County Airport, IN [REVISED]**

Bloomington, Monroe County Airport, IN
(Lat. 39°08′40″ N., long. 86°37′00″ W.)

That airspace extending upward from the surface to and including 3,300 feet MSL within an 4.3-mile radius of the Monroe County Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

**AGL IN E5 Bloomington, Monroe County Airport, IN [REVISED]**

Bloomington, Monroe County Airport, IN
(Lat. 39°08′40″ N., long. 86°37′00″ W.)

That airspace extending upward from 700 Feet Above the surface within a 7.3 mile radius of Monroe County Airport.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 02–252 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 01–AGL–01]**

## Proposed Modification of Class D Airspace; Rockford, IL; Modification of Class E Airspace; Rockford, IL

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to modify Class D airspace at Rockford, IL, and modify Class E airspace at Rockford, IL. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 01, RNAV SIAP to Rwy 7, RNAV (Y) SIAP to Rwy 19, RNAV(Z) SIAP to Rwy 19, RNAV(Y) SIAP to Rwy 25, RNAV(Z) SIAP to Rwy 25 have been developed for the Greater Rockford Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the radius of the existing Class D and Class E airspace for Greater Rockford Airport.

**DATES:** Comments must be received on or before February 11, 2002.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–01, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

**SUPPLEMENTARY INFORMATION:**

### 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 the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 01–AGL–01.'' 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 action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace and Class E airspace at Rockford, IL, by increasing the radius of the existing Class D airspace and Class E airspace for the Greater Rockford Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

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

on a substantial number of small entities under the criteria of the regulatory Flexibility Act.

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, 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 5000 Class D airspace.*

* * * * *

**AGL IL D Rockford, IL [REVISED]**

Greater Rockford Airport, IL
(Lat. 42°11′43″ N., long. 089°05′50″ W.)
Greater Rockford ILS Localizer
(Lat. 42°12′36″ N., long. 089°05′17″ W.)
GILMY LOM
(Lat. 42°06′52″ N., long. 089°05′55″ W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within an 4.6-mile radius of the Greater Rockford Airport and within 1.8 miles each side of the Greater Rockford Runway 36 ILS localizer course, extending south from the 4.6 mile radius to the GILMY LOM.

* * * * *

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

* * * * *

**AGL IL E5 Rockford, IL [REVISED]**

Greater Rockford Airport, IL
(Lat. 42°11′43″ N., long. 089°05′50″ W.)
GILMY LOM
(Lat. 42°06′52″ N., long. 089°05′55″ W.)

That airspace extending upward from 700 feet above the surface within a 7.1 mile radius of the Greater Rockford airport and within 7 miles east and 4.4 miles west of the Rockford ILS localizer south course, extending from the airport to 10.4 miles south of the GILMY LOM.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

**Nancy B. Shelton,**

*Manager, Air Traffic Division.*

[FR Doc. 02–249 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 01–AGL–11]**

## Proposed Modification of Class E Airspace; Manistee, MI

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to modify Class E airspace at Manistee, MI. A VHF Omnidirectional (VOR) Standard Instrument Approach Procedure (SIAP) Runway (Rwy) 09, and VOR SIAP Rwy 27 have been developed for Manistee County-Blacker Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing this approach. This action would change the extensions to the existing Class E airspace for Manistee County-Blacker Airport.

**EFFECTIVE DATES:** Comments must be received on or before February 11, 2002.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–11, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

**SUPPLEMENTARY INFORMATION:**

**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 the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 01–AGL–11.'' 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 action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Manistee, MI, by changing the extensions to the existing Class E airspace for Manistee County-Blacker Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charters. Class E airspace areas extending upward from 700 feet or more

above the surface are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL MI E5 Manistee, MI [REVISED]**

Manistee County-Blacker, MI

(Lat. 44°16′21″ N., long. 86°14′02″ W.)
Manistee VOR/DME
(Lat. 44°16′14″ N., long. 86°15′15″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Manistee County-Blacker Airport and within 4 miles north and 8 miles south of the Manistee VOR/DME 285° radial extending from the 7 mile radius to 16 miles west of the VOR/DME, and within 4 miles south and 8 miles north of the Manistee VOR/DME 086° radial extending from the 7-mile radius to 16 miles east of the VOR/DME.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 02–251 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 00–AGL–08]**

## Proposed Modification of Class E Airspace; Frankfort, MI

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to modify Class E airspace Frankfort, MI. A VHF Omnidirectional Range-A (VOR–A) Standard Instrument Approach Procedure (SIAP) has been developed for Frankfort Dow Memorial Field, Frankfort, MI. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing this approach. This action would add an extension to the existing Class E airspace for Frankfort Dow Memorial Field Airport.

**DATES:** Comments must be received on or before February 11, 2002.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 00–AGL–08, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

**SUPPLEMENTARY INFORMATION:**

**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 the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AGL–08.'' 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 action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Frankfort, MI, by adding an extension to the existing Class E airspace for Frankfort Dow Memorial Field Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL MI E5 Frankfort, MI [REVISED]**

Frankfort Dow Memorial Field Airport, MI
(Lat. 44°37′30″ N., long. 86°12′33″ W.)

That airspace extending upward from 700 feet above the surface within an 6.4-mile radius of the Frankfort Dow Memorial Field Airport, and within 2 miles each side of the Manistee VOR/DME 186° radial extending from the 6.3 mile radius to 9.8 miles south of the airport.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 02–250 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 01–AGL–02]**

## Proposed Modification of Class E Airspace; Greenville, MI

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to modify Class E airspace at Greenville, MI. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 10, and an RNAV SIAP Rwy 28 has been developed for Greenville Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would increase the radius of the existing controlled airspace for Greenville Municipal Airport.

**DATES:** Comments must be received on or before February 11, 2002.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–02, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

**SUPPLEMENTARY INFORMATION:**

**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 the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 01–AGL–02.'' 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 action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal

Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Greenville, MI, by increasing the radius of the controlled airspace for Greenville Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

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

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL MI ES Greenville, MI [REVISED]**

Greenville Municipal Airport, MI
(Lat. 43°08′32″ N., long. 85°15′16″ W.)

That airspace extending upward from 700 feet above the surface within an 7.1-mile radius of the Greenville Municipal Airport, MI.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 02–248 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 46

**[REG–125450–01]**

**RIN 1545–AY93**

## Liability For Insurance Premium Excise Tax

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

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed amendments to the regulations relating to liability for the insurance premium excise tax. This document affects persons who make, sign, issue, or sell a policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer. This document also provides a notice of public hearing on these proposed regulations.

**DATES:** Written or electronic comments, requests to speak and outlines of topics to be discussed at the public hearing scheduled for March 19, 2002, at 10 a.m. must be received by February 26, 2002.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG–125450–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–125450–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/regslist.html.* The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Amanda Ehrlich, (202) 622–3880; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

The insurance premium excise tax imposed by section 4371 originated as a stamp tax on certain insurance policies in the Act of February 24, 1919, Title IX, section 1100. This provision was re-enacted unchanged in the Revenue Act of 1924, as section 800; in the Revenue Act of 1926, as section 800; and in the Internal Revenue Code of 1939 (1939 Code), as section 1804. Section 1809(a) of the 1939 Code required the tax imposed by section 1804 to be paid ''by any person who makes, signs, issues, [or] sells * * * any of the documents [or] instruments * * * [including insurance policies subject to tax] * * * or for whose use or benefit the same are made, signed, issued, [or] sold * * *.'' Section 1809(b)(1) of the 1939 Code required the tax to be paid by the purchase of stamps to be affixed to taxable documents.

The insurance premium excise tax imposed by section 1804 of the 1939 Code was reenacted in the Internal Revenue Code of 1954 (1954 Code) as section 4371. Section 1809(a) and (b)(1) of the 1939 Code (relating to who is

liable for the tax and how it is to be paid) were reenacted as sections 4383 and 4374 of the 1954 Code, respectively. Section 4383 of the 1954 Code was renumbered as section 4384 by the Excise Technical Changes Act of 1958.

Section 4374 was amended in 1965 to authorize the Secretary or the Secretary's delegate to provide by regulations that the tax imposed by section 4371 shall be paid on the basis of a return, instead of by stamp. Excise Tax Reduction Act of 1965, Public Law 89–44, section 804(a), 79 Stat. 136, 160 (1965). Pursuant to this statutory authorization, the Secretary promulgated 26 CFR 46.4374–1 in 1970, which provides that the tax imposed by section 4371 shall be paid on the basis of a return and remitted by the person who pays the premium to a foreign insurer or reinsurer. TD 7023; 1970–1 C.B. 233, 236. For these purposes, the person who makes payment of the premium is the resident person who actually transferred the money, check, or its equivalent to the foreign insurer or reinsurer. The regulation further provided a reference to section 4384 for purposes of determining the persons liable for the tax. § 46.4374–1(a).

The Tax Reform Act of 1976 (1976 Act) combined sections 4374 and 4384 into a single Code section, and eliminated any references therein to the payment of the tax by stamps. Tax Reform Act of 1976, Public Law 94–455, section 1904(a)(12), 90 Stat. 1520, 1812–14 (1976). The 1976 Act repealed section 4374, which had required payment of the tax by stamps or by return pursuant to regulations. It renumbered section 4384 as section 4374, which imposes liability for the tax. Finally, the 1976 Act amended the new section 4374 to require payment of the tax by return. The regulations under section 4374 have not been changed to reflect the 1976 statutory amendments.

Some taxpayers have taken the position, contrary to the statute, that § 46.4374–1 (which does not reflect the 1976 legislative changes) imposes liability and requires payment of tax only if a premium is paid by a resident of the United States. This interpretation ignores the cross-reference in § 46.4374–1(a) to prior Code section 4384 for purposes of determining the persons who are liable for the tax. The proposed regulations revise § 46.4374–1(a) to conform the regulations to the 1976 statutory amendments by providing that any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold, is liable for the tax imposed by section 4371. Section 46.4374–1(c) also provides that the tax imposed by section 4371 shall be paid on the basis of a return by the person who makes payment of the premium to a foreign insurer or reinsurer or to any nonresident agent, solicitor, or broker. If the tax is not paid by the person who paid the premium, the tax imposed by section 4371 shall be paid on the basis of a return by any person who makes, signs, issues, or sells any of the documents or instruments subject to the tax imposed by section 4371, or for whose use or benefit such document or instrument is made, signed, issued, or sold.

**Proposed Effective Date**

These regulations are proposed to apply to premiums paid on or after the date final regulations are published in the **Federal Register**.

**Special Analysis**

It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. Treasury and the IRS request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be made available for public inspection and copying.

A public hearing has been scheduled for March 19, 2002 at 10 a.m., in room 4718, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to this hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by February 26, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting Information**

The principal author of these regulations is Amanda Ehrlich of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 46**

Excise taxes, Insurance, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 46 is proposed to be amended as follows:

## PART 46—EXCISE TAX ON POLICIES ISSUED BY FOREIGN INSURERS AND OBLIGATIONS NOT IN REGISTERED FORM

**Paragraph 1.** The authority citation for part 46 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**Par. 2.** Section 46.4374–1 is revised to read as follows:

### § 46.4374–1 Liability for tax.

(a) *In general.* Any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold, shall be liable for the tax imposed by section 4371.

(b) *When liability for tax attaches.* The liability for the tax imposed by section 4371 shall attach at the time the premium payment is transferred to the foreign insurer or reinsurer (including transfers to any bank, trust fund, or similar recipient, designated by the foreign insurer or reinsurer), or to any nonresident agent, solicitor, or broker. A person required to pay tax under this section may remit such tax before the time the tax attaches if he keeps records consistent with such practice.

(c) *Payment of tax.* The tax imposed by section 4371 shall be paid on the basis of a return by the person who makes payment of the premium to a foreign insurer or reinsurer or to any nonresident agent, solicitor, or broker. If the tax is not paid by the person who paid the premium, the tax imposed by section 4371 shall be paid on the basis of a return by any person who makes, signs, issues, or sells any of the documents or instruments subject to the

tax imposed by section 4371, or for whose use or benefit such document or instrument is made, signed, issued, or sold.

(d) *Penalty for failure to pay tax.* Any person who fails to comply with the requirements of this section with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of tax. (See section 7270.)

(e) *Effective date.* This section is applicable for premiums paid on or after the date final regulations are published in the **Federal Register**.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 02–325 Filed 1–4–02; 8:45 am]

**BILLING CODE 4830–01–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

**[Docket No. FEMA–B–7423]**

### Proposed Flood Elevation Determinations

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

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make determinations of BFE and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

**National Environmental Policy Act**

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

**Regulatory Flexibility Act**

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

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

**Executive Order 12612, Federalism**

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

**Executive Order 12778, Civil Justice Reform**

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

**List of Subjects in 44 CFR Part 67**

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

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

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

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, § *67.4*

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

IOWA.—JOHNSON COUNTY, IOWA AND INCORPORATED AREAS

| Flooding source(s) | Location of referenced elevation | Elevation feet *(NGVD) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Iowa River | Approximately 10,000 feet upstream of the confluence with Snyder Creek. | *636 | *636 | Johnson County, City of Iowa City and City of Coralville. |
| | Just downstream of U.S. Highway 6 | *643 | *644 | |
| | Approximately 4,000 feet upstream of Coralville Dam | *657 | *657 | |
| Ralston Creek | Just upstream of the North Branch Ralston Creek Detention Dam. | *699 | *700 | City of Iowa City and Johnson County. |
| | Approximately 500 feet upstream of Scott Boulevard .. | None | *731 | |

IOWA.—JOHNSON COUNTY, IOWA AND INCORPORATED AREAS—Continued

| Flooding source(s) | Location of referenced elevation | Elevation feet *(NGVD) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| South Branch Ralston Creek ... | Just upstream of Scott Boulevard ..... | None | *723 | City of Iowa City and Johnson County. |
| | Approximately 3,700 feet upstream of Scott Boulevard | None | *727 | |
| North Branch Snyder Creek .... | Approximately 4,550 feet downstream of U.S. Route 6 | None | *650 | City of Iowa City and Johnson County. |
| | Approximately 2,050 feet upstream of Chicago Rock Island and Pacific Railroad. | None | *668 | |
| Clear Creek ..... | At confluence with Iowa River ..... | *653 | *654 | Johnson County, City of Iowa City and City of Tiffin. |
| | Approximately 4,100 feet upstream of Camp Cardinal Road. | *667 | *668 | |
| | Approximately 5,300 feet downstream of Interstate 80 | *671 | *672 | |
| Willow Creek ..... | At confluence with Iowa River ..... | *641 | *642 | City of Iowa City and Johnson County. |
| | Approximately 650 feet upstream of U.S. Route 218 ... | None | *721 | |
| West Branch Snyder Creek ..... | At confluence with North Branch Snyder Creek ..... | None | *662 | Johnson County and City of Iowa City. |
| | Approximately 900 feet upstream of The West Spur Railroad. | None | *673 | |
| Middle Branch Willow Creek ... | At confluence with Willow Creek ..... | None | *677 | City of Iowa City. |
| | Approximately 300 feet upstream of Mormon Trek Boulevard. | None | *690 | |

#Depth in feet above ground.

**ADDRESSES:**

*Johnson County, Iowa and Incorporated Areas:*

Maps are available for inspection at Johnson County and Planning and Zone, 913 South Dubuque Street, Iowa City, Iowa

Send comments to Ms. Sally Stutsman, Chairperson, Johnson County, Board of Supervisors, Iowa City, Iowa 52240

*City of Iowa City, Iowa:*

Maps are available for inspection at the County Courthouse, P.O. Box325, Allison, Iowa

Send comments to The Honorable Ernest W. Lehman, Mayor, 410 East Washington Street, Iowa City, Iowa 52240

*City of Tiffin, Iowa:*

Maps are available for inspection at Tiffin City Hall, 211 Main Street, Tiffin, Iowa

Send comments to the Honorable Glenn Potter, Mayor, P.O. Box 196, Tiffin, Iowa 52430

*City of Coralville:*

Maps are available for inspection at the Coralville City Hall, 1512 17th Street, Coralville, Iowa

Send comments to the Honorable Jim Fausett, Mayor, City of Coralville, 1512 7th Street, P.O. Box 5127 Coralville, City of Iowa 52241

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

Dated: December 19, 2001.

**Robert F. Shea,**

*Acting Administrator, Federal Insurance and Mitigation Administration.*

[FR Doc. 02–320 Filed 1–4–02; 8:45 am]

**BILLING CODE 6718–04–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Parts 529, 531, 533, 535, 537, 538, 541, 542, 543, 544, 551, 552, 553, 554, 555, 556, 557, 564, 565, 566, 567, 568, 569, 570, 572, 573, 574, 575, 576, 577, 578, 579

**[Docket No. NHTSA–01–11227]**

### Federal Motor Vehicle Safety Standards (FMVSS); Small Business Impacts of Motor Vehicle Safety

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

**ACTION:** Notice of regulatory review; Request for comments.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) seeks comments on the economic impact of its regulations on small entities. As required by Section 610 of the Regulatory Flexibility Act, we are attempting to identify rules that may have a significant economic impact on a substantial number of small entities. We also request comments on ways to make these regulations easier to read and understand. The focus of this notice is rules that specifically relate to passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, incomplete vehicles, motorcycles, and motor vehicle equipment.

**DATES:** Comments must be received on or before January 25, 2002.

**ADDRESSES:** You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590. You may call Docket Management at: (202) 366–9324. You may visit the Docket from 10:00 am to 5:00 pm Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Nita Kavalauskas, Office of Regulatory Analysis and Evaluation, Office of Plans and Policy, National Highway Traffic Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC, 20590. Telephone: (202) 366–2584. Facsimile (fax): (202) 366–2559.

**SUPPLEMENTARY INFORMATION:**

## I. Section 610 of the Regulatory Flexibility Act

### *A. Background and Purpose*

Section 610 of the Regulatory Flexibility Act of 1980 (Public Law 96–354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), requires agencies to conduct periodic reviews of final rules that have a significant economic impact on a substantial number of small business entities. The purpose of the reviews is to determine whether such rules should be continued without change, amended, or rescinded, consistent with the objectives of applicable statutes, to minimize any significant economic impact of the rules on a substantial number of such small entities.

### *B. Review Schedule*

The Department of Transportation (DOT) published its Semiannual Regulatory Agenda on November 22, 1999, listing in Appendix D (64 FR 64684) those regulations that each operating administration will review under section 610 during the next 12 months. Appendix D also contains DOT's 10-year review plan for all of its existing regulations.

The National Highway Traffic Safety Administration (NHTSA, ''we'') has divided its rules into 10 groups by subject area. Each group will be reviewed once every 10 years, undergoing a two-stage process-an Analysis Year and a Review Year. For purposes of these reviews, a year will coincide with the fall-to-fall publication schedule of the Semiannual Regulatory Agenda. Thus, Year 1 (1998) began in the fall of 1998 and ended in the fall of 1999; Year 2 (1999) began in the fall of 1999 and ended in the fall of 2000; and so on.

During the Analysis Year, we will request public comment on and analyze each of the rules in a given year's group to determine whether any rule has a significant impact on a substantial number of small entities and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. In each fall's Regulatory Agenda, we will publish the results of the analyses we completed during the previous year. For rules that have subparts, or other discrete sections of rules that do have a significant impact on a substantial number of small entities, we will announce that we will be conducting a formal section 610 review during the following 12 months.

The section 610 review will determine whether a specific rule should be revised or revoked to lessen its impact on small entities. We will consider: (1) The continued need for the rule; (2) the nature of complaints or comments received from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other federal rules or with state or local government rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. At the end of the Review Year, we will publish the results of our review.

The schedule has been revised from its listing in the Semiannual Regulatory Agenda on November 22, 1999. A major revision to parts 591 through 594 has been proposed. Thus, we deemed it appropriate to delay our small business impact review of these parts from year 3 to year 8, and move the other regulations forward one year.

The following table shows the 10-year analysis and review schedule:

NHTSA SECTION 610 REVIEW PLAN[1]

| Year | Regulations to be reviewed | Analysis year | Review year |
|---|---|---|---|
| 1 | 49 CFR parts 501 through 526 and 571.213 | 1998 | 1999 |
| 2 | 49 CFR 571.131, 571.217, 571.220, 571.221, and 571.222 | 1999 | 2000 |
| 3 | 49 CFR 571.101 through 571.110 and 571.135 | 2000 | 2001 |
| 4 | 49 CFR parts 529 through 579, except part 571 | 2001 | 2002 |
| 5 | 49 CFR 571.111 through 571.129 and parts 580 through 590 | 2002 | 2003 |
| 6 | 49 CFR 571.201 through 571.212 | 2003 | 2004 |
| 7 | 49 CFR 571.214 through 571.219, except 571.217 | 2004 | 2005 |
| 8 | 49 CFR parts 591 through 594 | 2005 | 2006 |
| 9 | 49 CFR 571.223 through 571.304, part 500 and new parts and subparts under 49 CFR | 2006 | 2007 |
| 10 | 23 CFR parts 1200 and 1300 and new parts and subparts under 23 CFR | 2007 | 2008 |

[1] Revised schedule.

### *C. Regulations Under Analysis*

During Year 4 (2001), the Analysis Year, we will conduct a preliminary assessment of the following sections of 49 CFR Parts 529 through 579, except Part 571:

| Section | Title |
|---|---|
| 529 | Manufacturers of multistage automobiles |
| 531 | Passenger automobile average fuel economy standards |
| 533 | Light truck fuel economy standards |
| 535 | 3-year carryforward and carryback of credits for light trucks |
| 537 | Automotive fuel economy reports |
| 538 | Manufacturing incentives for alternative fuel vehicles |
| 541 | Federal motor vehicle theft prevention standard |
| 542 | Procedures for selecting lines to be covered by the theft prevention standard |
| 543 | Exemption from vehicle theft prevention standard |
| 544 | Insurer reporting requirements |
| 551 | Procedural rules |
| 552 | Petitions for rulemaking, defect, and noncompliance orders |
| 553 | Rulemaking procedures |
| 554 | Standards enforcement and defects investigation |

| Section | Title |
|---|---|
| 555 | Temporary exemption from motor vehicle safety and bumper standards. |
| 556 | Exemption for inconsequential defect or non-compliance. |
| 557 | Petitions for hearings on notification and remedy of defects. |
| 564 | Replaceable light source information. |
| 565 | Vehicle identification number requirements. |
| 566 | Manufacturer identification. |
| 567 | Certification. |
| 568 | Vehicles manufactured in two or more stages. |
| 569 | Regrooved tires. |
| 570 | Vehicle in use inspection standards. |
| 572 | Anthropomorphic test devices. |
| 573 | Defect and noncompliance reports. |
| 574 | Tire identification and recordkeeping. |
| 575 | Consumer information regulations. |
| 576 | Record retention. |
| 577 | Defect and noncompliance notification. |
| 578 | Civil penalties. |
| 579 | Defect and noncompliance responsibility. |

We are seeking comments on whether any requirements in parts 529 through 579, except part 571 have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. Business entities are generally defined as small businesses by Standard Industrial Classification (SIC) code, for the purposes of receiving Small Business Administration (SBA) assistance. Size standards established by SBA in 13 CFR 121.201 are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small. If your business or organization is a small entity and if any of the requirements in parts 529 through 579, except part 571 have a significant economic impact on your business or organization, please submit a comment to explain how and to what degree these rules affect you, the extent of the economic impact on your business or organization, and why you believe the economic impact is significant.

If the agency determines that there is a significant economic impact on a substantial number of small entities, it will ask for comment in a subsequent notice during the Review Year on how these impacts could be reduced without reducing safety.

**II. Plain Language**

*A. Background and Purpose*

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

*B. Review Schedule*

In conjunction with our section 610 reviews, we will be performing plain language reviews over a ten-year period on a schedule consistent with the section 610 review schedule. We will review parts 529 through 579, except part 571 to determine if these regulations can be reorganized and/or rewritten to make them easier to read, understand, and use. We encourage interested persons to submit draft regulatory language that clearly and simply communicates regulatory requirements, and other recommendations, such as for putting information in tables that may make the regulations easier to use.

**Comments**

*How Do I Prepare and Submit Comments?*

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21.) We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.** Comments may also be submitted to the docket electronically by logging onto the Docket Management System website at *http://dms.dot.gov*. Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing your comments electronically.

*How Can I be Sure That my Comments Were Received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

*How Do I Submit Confidential Business Information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential

business information, to the Chief Counsel, NHTSA, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

*Will the Agency Consider Late Comments?*

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

*How Can I Read the Comments Submitted by Other People?*

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

**William H. Walsh,**

*Associate Administrator for Plans and Policy.*

[FR Doc. 02–154 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 538

**[Docket No. NHTSA–2001–10774]**

**RIN 2127–AI41**

## Automotive Fuel Economy Manufacturing Incentives for Alternative FuelVehicles

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of intent to issue a notice of proposed rulemaking (NPRM).

**SUMMARY:** To provide an incentive for the production of vehicles that can operate on certain alternative fuels as well as on regular petroleum fuels, Congress established a special procedure for calculating the fuel economy of those vehicles for the purpose of determining compliance with the Corporate Average Fuel Economy standards. This procedure increases the fuel economy attributed to such ''dual-fueled'' vehicles. By statute, the incentive is available through the 2004 model year and may be extended by up to four additional model years through rulemaking.

The purpose of this document is to announce the intention to issue a proposal to extend the availability of the incentive for one or more additional model years.

**FOR FURTHER INFORMATION CONTACT:** The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590:

For non-legal issues: Mr. Kenneth Katz, Consumer Programs Division, Office of Planning and Consumer Programs, NPS–32, Room 5320, telephone (202) 366–4936, facsimile (202) 493–2290.

For legal issues: Otto Matheke, Office of the Chief Counsel, NCC–20, Room 5219, telephone (202) 366–5263, facsimile (202) 366–3820.

**SUPPLEMENTARY INFORMATION:**

### Background

Congress created the Corporate Average Fuel Economy (CAFE) program when it enacted the Energy Policy and Conservation Act of 1975 (Public Law 94–163; Dec. 22, 1975). The CAFE statutory provisions, now codified in chapter 329 of Title 49 of the United States Code (49 U.S.C. 32901 *et seq.*), mandate fuel economy standards that must be met by vehicle manufacturers. These standards apply separately to each manufacturer's annual fleet of passenger cars and to its annual fleet of light trucks under 8,500 lbs. gross vehicle weight rating, instead of applying to individual vehicles. Each manufacturer's average fuel economy is determined by the Environmental Protection Agency in accordance with procedures set forth in 49 U.S.C. 32904. Those procedures provide for determining the fuel economy of a manufacturer's model types produced in a particular model year and calculating a weighted fuel economy average for the manufacturer.

Congress amended the CAFE provisions when it enacted the Alternative Motor Fuels Act of 1988 (''AMFA'') (Public Law 100–94; October 14, 1988). The purposes of AMFA were to encourage the development and use of methanol, ethanol and natural gas as transportation fuels and to promote the production of alternative fuel vehicles (AFVs). For the latter purpose, AMFA provides special procedures for calculating the fuel economy of ''dedicated'' alternative fuel vehicles and ''dual-fueled'' vehicles that meet specified eligibility criteria. ''Dedicated vehicles'' are cars or light trucks designed to operate exclusively either on natural gas or on a methanol or ethanol fuel mixture composed of at least 85 percent of either substance. ''Dual-fueled vehicles'' have the capability to operate on conventional petroleum and the capability to operate on an alternative fuel. Most dual-fueled vehicles produced to date are capable of operating on E85 (a blend of 85% ethanol and 15% gasoline) and either gasoline or diesel. The special calculation procedures used in determining the fuel economy of alternative fuel vehicles substantially increase the fuel economy ratings of these vehicles.

In creating the incentive program for dual-fueled vehicles, Congress expressly limited both the extent to which a manufacturer can avail itself of the incentive in any model year as well as the duration of the incentives.[1] For the 1993–2004 model years, the maximum increase in CAFE available to a

[1] Congress did not apply either of these limitations to the incentive program for dedicated vehicles.

manufacturer for producing qualifying dual-fueled vehicles is 1.2 miles per gallon.

AMFA provides that the incentive is available through the end of the 2004 model year. In addition, AMFA provides that the agency may either extend the program to model years beyond the end of the 2004 model year or allow the program to terminate at that time. An extension of up to four model years is authorized. If the program were extended, the maximum increase in CAFE that could be attributed to the incentive would be limited to .9 miles per gallon in any of those model years.

AMFA further directs that NHTSA evaluate the dual-fuel incentive program and provide a report to Congress analyzing the success of the incentive program and preliminary conclusion regarding extension of the program beyond the 2004 model year.

**Forthcoming Actions**

In the near future, the agency plans to issue the report to Congress and a proposal to extend the incentive program for one or more additional model years.

Issued on: December 31, 2001.

**Noble Bowie,**

*Director, Office of Planning and Consumer Programs.*

[FR Doc. 01–32260 Filed 12–31–01; 3:21 pm]

BILLING CODE 4910–59–P

# Notices

Federal Register
Vol. 67, No. 4
Monday, January 7, 2002

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.

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Meeting

**AGENCY:** U.S. Commission on Civil Rights.

**DATE AND TIME:** Friday, January 11, 2002, 8:30 a.m.

**PLACE:** The location of this event has been changed. The new address is the U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

**STATUS:** Open to the public.

*Agenda*

I. Approval of Agenda
II. Approval of Minutes of December 7, 2001 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Commission Appointments for District of Columbia, Maryland, Virginia and West Virginia
VI. Future Agenda Items
9:30 a.m.—Document Production Hearing for the Education Accountability Project
10:00 a.m.—Environmental Justice Hearing

**Debra A. Carr,**
*Deputy General Counsel.*
[FR Doc. 02–389 Filed 1–3–02; 10:53 am]
**BILLING CODE 6335–01–M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–831]**

### Fresh Garlic From the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews

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

**ACTION:** Notice of initiation of new shipper antidumping duty reviews.

**SUMMARY:** The Department of Commerce has received requests to conduct three new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(d), we are initiating these new shipper reviews.

**EFFECTIVE DATE:** January 7, 2002.

**FOR FURTHER INFORMATION CONTACT:** Edythe Artman or Dunyako Ahmadu, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3931 or (202) 482–0198, 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 references are made to the Department of Commerce's (the Department) regulations at 19 CFR part 351 (2001).

**Background**

On November 29, 2001, the Department received a request for a new shipper review from Shandong Heze International Trade and Developing Company (Shandong Heze). On November 30, 2001, we received requests for new shipper reviews from Jinan Yipin Corporation, Ltd. (Jinan Yipin) and Huaiyang Hongda Dehydrated Vegetable Company (Hongda). All three companies are Chinese producers and exporters of fresh garlic from the People's Republic of China. We have reviewed their requests and find that they comply with the content requirements for requests set forth under 19 CFR 351.214(b)(2). The period of review is November 1, 2000, through October 31, 2001.

**Initiation of Review**

Pursuant to 19 CFR 351.214(b)(2)(i), Shandong Heze, Jinan Yipin, and Hongda provided certifications that they had not exported subject merchandise to the United States during the period of investigation. In accordance with 19 CFR 351.214(b)(2)(iii)(A), each company further certified that, since the initiation of the original investigation, it has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the period of investigation, including those not individually examined during the investigation.

Also, as required by 19 CFR 351.214(b)(2)(iii)(B), each of the three companies certified that its export activities were not controlled by the central government. Thus, the requests from Shandong Heze, Jinan Yipin, and Hongda meet the content requirements set forth under 19 CFR 351.214(b)(2)(i) and (iii). In addition, the companies submitted documentation establishing the following: (1) the date on which their subject merchandise was first entered, or withdrawn from warehouse, for consumption or the date on which the exporter or producer first shipped the subject merchandise for export to the United States; (ii) the volume of that shipment; and (iii) the date of the first sale to an unaffiliated customer in the United States. Thus, the requests for review meet the content requirements set forth under 19 CFR 351.214(b)(2)(iv). Accordingly, pursuant to section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating new shipper reviews for shipments of fresh garlic from the People's Republic of China produced and exported by Shandong Heze, Jinan Yipin, and Hongda. The period of review covers the period November 1, 2000, through October 31, 2001. *See* 19 CFR 351.214(g). We intend to issue final results of this review no later than 270 days after the day on which these new shipper reviews are initiated. *See* 19 CFR 351.214(i).

Concurrent with publication of this notice and in accordance with 19 CFR 351.214(e), we will instruct the Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by Shandong Heze, Jinan Yipin, and Hongda until the completion of the review.

The interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B)(ii)

of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: December 28, 2001.

**Richard W. Moreland,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 02–317 Filed 1–4–02; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

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

**ACTION:** Publication of annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

**SUMMARY:** The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period October 1, 2000 through September 30, 2001. We are publishing the current listing of those subsidies that we have determined exist.

**EFFECTIVE DATE:** January 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Tipten Troidl, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–2786.

**SUPPLEMENTARY INFORMATION:** Section 702(a) of the Trade Agreements Act of 1979 (as amended) (''the Act'') requires the Department of Commerce (''the Department'') to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(g)(b)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's annual list of subsidies on articles of cheese that were imported during the period October 1, 2000 through September 30, 2001.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(g)(b)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: December 28, 2001.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

APPENDIX.—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

| Country | Program(s) | Gross [1] Subsidy ($/lb) | Net [2] Subsidy ($/lb) |
|---|---|---|---|
| Austria | European Union Restitution Payments | 0.12 | 0.12 |
| Belgium | EU Restitution Payments | 0.02 | 0.02 |
| Canada | Export Assistance on Certain Types of Cheese | 0.23 | 0.23 |
| Denmark | EU Restitution Payments | 0.06 | 0.06 |
| Finland | EU Restitution Payments | 0.14 | 0.14 |
| France | EU Restitution Payments | 0.09 | 0.09 |
| Germany | EU Restitution Payments | 0.09 | 0.09 |
| Greece | EU Restitution Payments | 0.00 | 0.00 |
| Ireland | EU Restitution Payments | 0.07 | 0.07 |
| Italy | EU Restitution Payments | 0.00 | 0.00 |
| Luxembourg | EU Restitution Payments | 0.07 | 0.07 |
| Netherlands | EU Restitution Payments | 0.05 | 0.05 |
| Norway | Indirect (Milk) Subsidy | 0.27 | 0.27 |
| | Consumer Subsidy | 0.12 | 0.12 |
| Total | | 0.39 | 0.39 |
| Portugal | EU Restitution Payments | 0.04 | 0.04 |
| Spain | EU Restitution Payments | 0.04 | 0.04 |
| Switzerland | Deficiency Payments | 0.06 | 0.06 |
| U.K. | EU Restitution Payments | 0.05 | 0.05 |

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 02–318 Filed 1–4–02; 8:45 am]
BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Institute of Standards And Technology

### Manufacturing Extension Partnership National Advisory Board

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Manufacturing Extension Partnership National Advisory Board (MEPNAB), National Institute of Standards and Technology (NIST), will meet Thursday, January 17, 2002, from 8:00 a.m. to 3:30 p.m. The MEPNAB is composed of nine members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was established to fill a need for outside input on MEP. MEP is a unique program consisting of centers in all 50 states and Puerto Rico. The centers have been created by state, federal, and local partnerships. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. The purpose of this meeting is to hear about latest developments, status of plans for 2002 and the logic, background, progress and goals of the 360vu brand. There will also be a presentation on findings from a technology extension pilot partnering. Discussions scheduled to begin at 8:00 a.m. and to end at 9:30 a.m. and to begin at 2:30 p.m. and to end at 3:30 p.m. on January 17, 2002, on personnel issues and proprietary budget information will be closed.

**DATES:** The meeting will convene January 17, 2002 at 8:00 a.m. and will adjourn at 3:30 p.m. on January 17, 2002.

**ADDRESSES:** The meeting will be held in the Employees Lounge, Administration Building, at NIST, Gaithersburg, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Linda Acierto, Senior Policy Advisor, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, MD 20899–4800, telephone number (301) 975–5033.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration with the concurrence of the General Counsel formally determined on January 3, 2002, that portions of the meeting which involve discussion of proposed funding of the MEP may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because that portion will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of the meeting which involve discussion of the staffing of positions in MEP may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in that portion of the meeting is likely to reveal information of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: January 3, 2002.

**Karen H. Brown,**

*Deputy Director.*

[FR Doc. 02–428 Filed 1–4–02; 8:45 am]
BILLING CODE 3510–13–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 010202A]**

### Gulf of Mexico Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene public meetings.

**DATES:** The meetings will be held on January 21– 24, 2002.

**ADDRESSES:** These meetings will be held at the Holiday Inn Fort Brown, 1900 East Elizabeth Street, Brownsville, TX 78520; telephone: 956–546–2201. Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Wayne E. Swingle, Executive Director, telephone: 813–228–2815.

**SUPPLEMENTARY INFORMATION:**

**January 21**

8:30 a.m. thru 10:30 a.m.–Convene the Mackerel Management Committee to develop recommendations for mackerel and cobia status determination criteria. The full Council will consider these recommendations on Thursday morning.

10:30 a.m. thru 11:30 a.m.–Convene the Shrimp Management Committee to hear a NMFS report on the Texas closure analyses and make recommendation for the full Council for discussion on Thursday morning.

1 p.m. thru 5:30 p.m.–Convene the Reef Fish Management Committee to review a draft regulatory amendment containing alternatives for rebuilding of the red grouper stock and to hear the total allowable catch (TAC) recommendations of the scientific panels and Reef Fish Advisory Panel (AP) for gag, vermillion snapper, and gray triggerfish. The Committee will also discuss development of a red snapper individual transferable quota protocol.

**January 22**

8:30 a.m. thru 10:30 a.m.–Continue the Reef Fish Management Committee, if necessary.

10:30 a.m. thru 11:30 a.m.–Convene the Deep-Water Crab Management Committee to discuss an options paper for the development of a Deep-water Crab Fishery Management Plan (FMP). The species that would be managed under the Deep-water Crab FMP will be the golden crab (*Chaceon fenneri*) and red crab (*Chaceon quinquedens*). The preliminary issues and options paper for the development of a Deep-water Crab FMP examines fisheries issues including management needs, gear requirements and restrictions, crab size and sex limitations for harvest, and requirements for fishery participants.

1 p.m. thru 3:30 p.m.–Convene the Administrative Policy Committee to discuss congressional bills entitled the ''Fishery Recovery Act'' and ''Freedom to Fish Act.'' The Committee recommendations will be considered by the Council as recommendations for amending the Magnuson-Stevens Fishery Conservation & Management Act (Magnuson Stevens Act).

3:30 p.m. thru 4:30 p.m.–(Closed Session) Convene the AP Selection Committee to recommend members for two Ad Hoc panels to review preparation of a supplemental environmental impact statement (SEIS) for the Essential Fish Habitat (EFH) Amendment. 4:30 p.m. thru 5:30 p.m.–(Closed Session) Convene the Personnel Committee to consider revisions to the personnel section of the Administrative Handbook.

**January 23**

8:30 a.m.–Convene Council.

8:45 a.m. thru 12 noon–Receive public testimony on the Texas closure, overfishing and overfished criteria for mackerel and cobia, and TAC recommendations for gag grouper, vermillion snapper, and gray triggerfish. Although the Council will hear public testimony on TAC for these three stocks, final action on gag will not be taken until the March Council meeting in Mobile, AL or the May Council meeting in Destin, FL. Final action on gray triggerfish will be taken at the March Council meeting in Mobile, AL.

1:30 p.m. thru 5:30 p.m.–Receive the report of the Reef Fish Management Committee.

5 p.m. thru 5:30 p.m.–(Closed Session) Receive a report of the AP Selection Committee.

5:30 p.m. thru 5:45 p.m.–(Closed Session) Receive a report of the Personnel Committee. January 24

8:30 a.m. thru 8:45 a.m.–Receive a report of the AP Selection Committee.

8:45 a.m. thru 9:30 a.m.–Receive a report of the Mackerel Management Committee.

9:30 a.m. thru 9:45 a.m.–Receive a report of the Shrimp Management Committee.

9:45 a.m. thru 10:15 a.m.–Receive a report of the Deep-Water Crab Management Committee.

10:15 a.m. thru 12 noon–Receive a report of the Administrative Policy Committee.

1:30 p.m. thru 2:30 p.m.–Receive a status report on contract for preparation of SEIS for the EFH Amendment.

2:30 p.m. thru 2:45 p.m.–Receive a report of the Coral Reef Task Team Meeting.

2:45 p.m. thru 3 p.m.–Receive a report on the Gulf and South Atlantic Fishery Foundation turtle excluder device workshop.

3 p.m. thru 3:30 p.m.–Receive Enforcement Reports.

3:30 p.m. thru 3:45 p.m.–Receive the NMFS Regional Administrator's Report.

3:45 p.m. thru 4 p.m.–Receive Director's Reports.

4 p.m. thru 4:15 p.m.–Other Business

Although non-emergency issues not contained in the agenda may come before the Council for discussion, in accordance with the Magnuson Stevens Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. A copy of the Committee schedule and agenda can be obtained by calling 813 228–2815.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by January 14, 2002.

Dated: January 2, 2002.

**Richard W. Surdi,**

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

[FR Doc. 02–319 Filed 1–4–02; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF ENERGY

### Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

**AGENCY:** Office of Environmental Management, Department of Energy.

**ACTION:** Notice of the acceptance of claims and the availability of funds for reimbursement in fiscal year (FY) 2002.

**SUMMARY:** This Notice announces the Department of Energy (DOE) acceptance of FY 2002 claims for reimbursement under Title X of the Energy Policy Act of 1992. Approximately $19.5 million in funds for FY 2002 are available for reimbursement of certain costs of remedial action at eligible active uranium and thorium processing sites pursuant to Title X of the Energy Policy Act of 1992. This amount includes $1 million in FY 2002 appropriations plus approximately $18.5 million available from FY 2001 appropriations. The Department expects to make payments on approved FY 2001 claims from these appropriations by April 30, 2002.

**DATES:** The closing date for the submission of claims in FY 2002 is May 1, 2002. These claims will be processed for payment by April 30, 2003, based on the availability of funds from congressional appropriations.

**ADDRESSES:** Claims should be forwarded by certified or registered mail, return receipt requested, to the U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division, P.O. Box 5400, Albuquerque, NM 87185–5400, or by express mail to the U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division, H and Pennsylvania Streets, Albuquerque, NM 87116. All claims should be addressed to the attention of Mr. Gilbert Maldonado. Two copies of the claim should be included with each submission.

**FOR FURTHER INFORMATION CONTACT:** Gilbert Maldonado at (505) 845–4035 of the U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division.

**SUPPLEMENTARY INFORMATION:** DOE published a final rule under 10 CFR part 765 in the **Federal Register** on May 23, 1994, (59 FR 26714) to carry out the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. Title X requires DOE to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as determined by DOE in accordance with 10 CFR part 765. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

**Authority:** Section 1001–1004 of Public Law 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

Issued in Washington, DC, on this 18th of December, 2001.

**David E. Mathes,**

*Team Leader, Albuquerque/Nevada Team, Small Sites Closure Office, Office of Site Closure.*

[FR Doc. 02–287 Filed 1–4–02; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Advanced Liquid Natural Gas (LNG) Onboard Storage Systems

**AGENCY:** Chicago Operations Office, DOE.

**ACTION:** Notice of intent to issue a financial assistance solicitation.

**SUMMARY:** DOE intends to issue a financial assistance solicitation in February 2002 for research and development in the area of Advanced Liquid Natural Gas (LNG) Onboard Storage Systems. The long-term goal is to demonstrate cryogenic tank and pump systems that have commercial potential. The short-term goal is to validate cryogenic pumping design concepts through a laboratory proof-of-concept test program. The scope of work for the solicitation will be in two phases. Phase I activities will involve the ''proof of concept'' through a validation test program. Tasks under this phase will cover: construction of a test stand; fabrication of test items; component testing; pilot testing of a complete fuel delivery system; redesign and optimization; and prototype testing. Phase II activities will involve tank certification testing and road testing. (Phase II funding will be based on availability of funds, test data, design and market plan.) It is anticipated that these efforts will take place over a twenty-four month period under a cooperative agreement arrangement. One or two cooperative agreements will result from the solicitation. Total Government funding is expected to be approximately $1,000,000.00. Successful applicants are expected to cost-share a minimum of 30% of the project cost. Technical program requirements include (1) low-pressure (15 psig or less) on-board storage, and (2) a no-vent system, both on station refuel and fuel delivery to the engine. It is anticipated that award(s) as a result of the solicitation will be made in July, 2002. It is further anticipated that Phase II funding for this project will be available in the FY 2003 budget.

**DATES:** The solicitation will be available on DOE's ''Industry Interactive Procurement System'' (IIPS) Web page located at *http://e-center.doe.gov* on or about February 15, 2002. Prospective applicants can obtain access to the solicitation from the above Internet address or through the DOE Chicago Operations Office (CH) Internet address at *http://www.ch.doe.gov* under ''current solicitations''. The deadline for the submission of applications will be identified in the solicitation.

**ADDRESSES:** The solicitation, when issued, will include a narrative statement of work, program requirements, qualification criteria, evaluation criteria, and other information. The solicitation and any subsequent amendments will be published on the above mentioned Internet addresses. All applications must be submitted through IIPS in accordance with the instructions provided in the solicitation.

**FOR FURTHER INFORMATION CONTACT:** Sharon L. Donaldson, 630/252–0953.

**SUPPLEMENTARY INFORMATION:** An Advanced LNG Storage System incorporates the use of a fuel pump. LNG fuel pumps are currently being used on high-pressure (3600 psig) direct injected natural gas engines. There are, however, advantages to using LNG pumps for all types of engines, since 25% more natural gas can be stored in a tank when fuel tank saturation pressure is below 15 psig. The lower pressure of the vehicle's storage tank also helps standardize and simplify the operation of the natural gas refueling station. Operating at low pressures can also reduce venting losses and may offer savings in equipment costs. The major obstacle to low-pressure onboard storage is the availability of a highly reliable in-tank LNG pump. DOE, therefore, has interest in an R&D test program that further develops low-pressure onboard LNG pumping capability. Interested parties will be required to address the following program requirements: type of refueling (either single line fill or two line fill); thermal/pressure tank management; fuel weathering; fuel delivery sufficient for a 425-hp engine; cryogenic pump durability and maintenance schedule; tank hold time; redundancy in case of pump failure; business plan; and safety. It is DOE's intent to evaluate submitted designs and business plans, and support the further testing of the most promising approaches. Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS HeIpDesk@e-center.doe.gov.* The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Issued: Argonne, Illinois on December 26, 2001.

**John D. Greenwood,**

*Assistant Manager for Acquisition and Assistance.*

[FR Doc. 02–281 Filed 1–4–02; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Science Financial Assistance Program Notice 02–03; Environmental Management Science Program (EMSP): Research Related to Subsurface Contamination in the Vadose and Saturated Zones

**AGENCY:** Department of Energy.

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Offices of Science (SC) and Environmental Management (EM), U.S. Department of Energy (DOE), hereby announce their interest in receiving grant applications to support specifically innovative, fundamental research to investigate DOE subsurface contamination in the vadose and saturated zones.

**DATES:** The deadline for receipt of formal applications is 4:30 P.M., E.S.T., Wednesday, March 27, 2002, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2002.

**ADDRESSES:** Applications must be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, Attn: Program Notice 02–03. This address must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant.

**FOR FURTHER INFORMATION CONTACT:** Dr. Roland F. Hirsch, SC–73, Mail Stop F–237, Medical Sciences Division, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–9009, facsimile: (301) 903–0567, e-mail: *roland.hirsch@science.doe.gov*, or Mr. Mark Gilbertson, Office of Science and Technology, Office of Environmental Management, 1000 Independence Avenue, SW, Washington, D.C. 20585, telephone: (202) 586–7150, facsimile: (202) 596–1492, e-mail: *mark.gilbertson@em.doe.gov.* The full text of Program Notice 02–03 is available via the Internet using the following Web site address: *http://*

*www.science.doe.gov/production/grants/grants.html.*

**SUPPLEMENTARY INFORMATION:** The Office of Environmental Management, in partnership with the Office of Science, sponsors the Environmental Management Science Program (EMSP) to fulfill DOE's continuing commitment to the cleanup of DOE's environmental legacy. The program was initiated in Fiscal Year 1996, to (1) address long-term technical issues crucial to the EM mission, and (2) provide EM with near-term fundamental data critical to the advancement of technologies that are under development, but not yet at full scale nor implemented. Proposed basic research under this notice should contribute to environmental management activities that would decrease risk for the public and workers, provide opportunities for major cost reductions, reduce time required to achieve EM's mission goals, and, in general, should address problems that are considered intractable without new knowledge.

This program is designed to inspire breakthroughs in areas critical to the EM mission through basic research and will be managed in partnership with SC. The Office of Science's procedures, as set forth in the Office of Science Merit Review System, as published in the **Federal Register**, March 11, 1991, Vol. 56, No. 47, pages 10244–10246, will be used for merit review of applications submitted in response to this notice.

Subsequent to the formal scientific merit review, applications that are judged to be scientifically meritorious will be evaluated by DOE for relevance to the objectives of the Environmental Management Science Program. Additional information can be obtained about the general program at: *http://emsp.em.doe.gov.*

**Purpose**

Over the past 50 years, the United States created an industrial complex to develop, test, manufacture, and maintain nuclear weapons for national security purposes. The production and testing of nuclear weapons created a legacy of significant environmental contamination, ranging from uranium mining and milling, waste disposal, and radionuclide migration in ground water and soil. In 1995, the 104th Congress authorized creation of the Environmental Management Science Program (EMSP) to develop a long term, basic science infrastructure to focus on the environmental cleanup effort DOE began formally in 1989. To address the largest environmental cleanup program in the world, from a cost perspective, EMSP has the following objectives:

- Provide scientific knowledge that will revolutionize technologies and cleanup approaches to significantly reduce future costs, schedules, and risks.
- ''Bridge the gap'' between broad fundamental research that has wide-ranging applicability, such as that performed in DOE's Office of Science and needs-driven applied technology development that is conducted in EM's Office of Science and Technology.
- Focus the Nation's science infrastructure on critical DOE environmental management problems.

Since 1996, the Program has held six competitions and has awarded over $290 million in funding to 361 research projects. A breakdown of the EMSP awards by year is as follows:

- 1996 and 1997: 202 awards totaling $160 million targeted at a broad spectrum of basic science cleanup and waste management issues.
- 1998: 33 awards totaling $30 million focused on high-level radioactive waste and decontamination and decommissioning issues.
- 1999: 39 awards totaling $30 million fostered basic research in the areas of vadose zone contamination and low dose radiation.
- 2000: 42 awards totaling $30 million in research renewals for 1996 and 1997 funded projects.
- 2001: 45 awards totaling $39 million focused on additional high-level radioactive waste and decontamination and decommissioning issues.

**Representative Research Areas**

Basic research is solicited in all areas of science with the potential for addressing problems in subsurface contamination and transport processes in the vadose and saturated zones. Processes and problems in the vadose zone constitute important subjects of concern to the Department's Environmental Management Program. Relevant scientific disciplines include, but are not limited to: geological sciences (including geochemistry, geophysics, hydrogeologic flow and transport modeling, process modeling, and hydrologic field-studies), plant sciences (including mechanisms of contaminant uptake, concentration, sequestration, and phytoremediation), chemical sciences(including fundamental interfacial chemistry, computational chemistry, actinide chemistry, and analytical chemistry and instrumentation), engineering sciences (including control systems and optimization, diagnostics, transport processes, fracture mechanics, and bioengineering), materials science (including other novel materials-related strategies), and bioremediation (including biogeochemistry; microbial science related to ex situ treatment of metals, radionuclides, and organics; and in situ treatment of organics). The Natural and Accelerated Bioremediation Research (NABIR) program in the Office of Biological and Environmental Research, Office of Science, may issue a Notice related to in situ treatment of metals and radionuclides during FY 2002. Research projects relating to this area should be submitted to NABIR rather than to EMSP. Additional information about the NABIR program can be found at: *http://www.lbl.gov/NABIR/.*

**Project Renewals**

Lead Principal Investigators of record for Projects funded under Office of Science Notice 99–06, Environmental Management Science Program: Research Related to Subsurface Contamination, are eligible to submit renewal applications under this solicitation.

**Program Funding**

It is anticipated that up to a total of $4,000,000 of Fiscal Year 2002, funds will be available for new and renewal EMSP awards resulting from this Notice. Multiple-year funding of grant awards is anticipated, contingent upon the availability of appropriated funds. Award sizes are expected to be on the order of $100,000–$300,000 per year for total project costs for a typical three-year grant. Collaborative projects involving several research groups or more than one institution may receive larger awards if merited. The program will be competitive and offered to investigators in universities or other institutions of higher education, other non-profit or for-profit organizations, non-Federal agencies or entities, or unaffiliated individuals. DOE reserves the right to fund in whole or part any or none of the applications received in response to this Notice. A parallel announcement with a similar potential total amount of funds will be issued to DOE Federally Funded Research and Development Centers (FFRDCs). All projects will be evaluated using the same criteria, regardless of the submitting institution. Additionally, relevant innovative basic research pertaining to other sites will be considered.

**Collaboration and Training**

Applicants to the EMSP are strongly encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and FFRDCs, including the DOE National

Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible.

Applicants are also encouraged to provide training opportunities, including student involvement, in applications submitted to EMSP.

**Application Format**

Applicants are expected to use the following format in addition to following instructions in the Office of Science Application Guide. Applications must be written in English, with all budgets in U.S. dollars.

- Office of Science Face Page (DOE F 4650.2 (10–91)).
- Application classification sheet (a plain sheet of paper with one selection from the list of scientific fields listed in the Application Categories Section).
- Table of Contents.
- Project Abstract (no more than one page).
- Budgets for each year and a summary budget page for the entire project period (using DOE F–4620.1).
- Budget Explanation. Applicants are requested to include in the travel budget funds to attend: (1) An initial research kick-off meeting; (2) for each year, to attend either the National EMSP Workshop, or a Focus Area-specific Mid-Year Review; and (3) one or more extended visits (1 to 2 weeks in duration) to a cleanup site by either the Principal Investigator, or a senior staff member, or collaborator.
- Budgets and Budget explanation for each collaborative subproject, if any.
- Project Narrative (recommended length is no more than 20 pages; multi-investigator collaborative projects may use more pages if necessary up to a total of 40 pages).
- Goals.
- Significance of Project to the EM Mission.
- Background.
- Research Plan.
- Preliminary Studies (if applicable).
- Research Design and Methodologies.
- Literature Cited.
- Collaborative Arrangements (if applicable).
- Biographical Sketches (limit 2 pages per senior investigator).
- Description of Facilities and Resources.
- Current and Pending Support for each senior investigator.

**Application Categories**

In order to properly classify each application for evaluation and review, the documents must indicate the applicant's preferred scientific research field, selected from the following list.

Field of Scientific Research:

1. Actinide Chemistry.
2. Analytical Chemistry and Instrumentation.
3. Bioremediation.
4. Engineering Sciences.
5. Geochemistry.
6. Geophysics.
7. Hydrogeology.
8. Interfacial Chemistry.
9. Materials Science.
10. Plant Science.
11. Other.

**Application Evaluation and Selection**

*Scientific Merit*

The program will support the most scientifically meritorious and relevant work, regardless of the institution. Formal applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d).

1. Scientific and/or Technical Merit of the Project.
2. Appropriateness of the Proposed Method or Approach.
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources.
4. Reasonableness and Appropriateness of the Proposed Budget.

External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

**Relevance to Mission**

Researchers are encouraged to demonstrate a linkage between their research projects and significant contamination problems at DOE sites. Researchers can establish this linkage in a variety of ways, for example, by elucidating the scientific problems to be addressed by the proposed research and explaining how the solution of these problems could improve remediation capabilities. Of course, given the nature of basic research, there will not always be a clear pathway between research results and application to site remediation.

Subsequent to the formal scientific merit review, applications which are judged to be scientifically meritorious will be evaluated by DOE for relevance to the objectives of EMSP. DOE shall also consider, as part of the evaluation, program policy factors such as an appropriate balance among the program areas, including research already in progress. Past research solicitations, abstracts, and research reports of projects funded under EMSP can be viewed at: *http://emsp.em.doe.gov/researcher.htm.*

**Application Guide and Forms**

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is made.

**Subsurface Contamination Research Needs**

This research Notice has been developed for Fiscal Year 2002, with the primary objective of providing continuity in scientific knowledge that will revolutionize technologies and clean-up approaches for solving DOE's most complex environmental problems. An overview of EMSP vadose and saturated zone research needs is summarized in this section based on the National Academy of Sciences, National Research Council (NRC) report published in 2000 titled ''Research Needs in Subsurface Science.'' NRC recommendations for basic research focus in four areas:

- Location and characterization of subsurface contaminants and characterization of the subsurface.
- Conceptual modeling.
- Containment and stabilization.
- Monitoring and validation.

More detailed explanations of the nature and extent of environmental contamination throughout the DOE Complex, particularly at the six largest Field Offices, and reference web sites, can be found in the background section of this Notice. Interested investigators are referred to three web sites that provide information regarding subsurface contamination across the DOE Complex:

- Subsurface Contamination Focus Area (SCFA) at: *http://www.envnet.org/scfa/* provides new science technologies, approaches, and technical assistance to address soil and water pollution, reducing the risk and cost of cleanup and stewardship. Researchers are invited to review the SCFA Product Lines and Technical Targets; the later is

under development to strategically guide research and technology products to end-users. A few of the critical research areas included in the Technical Targets are: characterizing and monitoring the lateral and vertical extent of dense nonaqueous phase liquids (DNAPLs) transport; reactive materials for barrier systems that maintain permeability over time; biogeochemical processes leading to the mobilization/immobilization of the contaminants in soils and sediments, as well as the those factors controlling their bioavailability; and monitored natural attenuation processes and validation strategies.

• Idaho National Engineering and Environmental Laboratory lead an effort to develop a National Roadmap for Vadose Zone Science and Technology described at: *http://www.inel.gov/vadosezone/* to improve vadose zone characterization and to monitor and simulate subsurface contamination fate and transport, integrating the saturated zone.

• Idaho National Engineering and Environmental Laboratory's (INEEL) role as EM's Lead Lab is to ensure the integration of critical new science, technology, and programmatic solutions for cleanup and long term stewardship, described at: *http://www.inel.gov/environment/em-lead.shtml.*

There are about 6.4 billion cubic meters of contaminated soil, groundwater, and other environmental media at the DOE sites. Contaminants of concern across the Complex broadly include: radionuclides, metals, and dense nonaqueous phase liquids (DNAPLs). More specifically, key chemicals by group are:

• Radionuclides: plutonium, strontium–90, cesium–137, isotopes of uranium, trituim, thorium, technecium–99, radium, and iodine–129.

• Metals: lead, chromium VI, mercury, zinc, beryllium, arsenic, cadmium, and copper.

• DNAPLs: carbon tetrachloride, trichloroethylene, dichloroethylene, tetrachloroethylene, chloroform, dichloromethane, and polychlorinated biphenyls.

The life cycle costs for the Office of Environmental Management cleanup program have been estimated to be $147 billion between 1997 and 2070 (DOE 1998a). During this period of time, the EMSP research results can make a significant impact on reducing risks, costs, and cleanup schedules.

Details of the programs of the Office of Environmental Management and the technologies currently under development or in use by the Environmental Management Program can be found at: *http://www.em.doe.gov* and at the extensive links contained therein. The programs and technologies should be used to obtain a better understanding of the missions and challenges in environmental management in DOE when considering areas of research to be proposed.

*Location and Characterization of Subsurface Contaminants and Characterization of the Subsurface*

The challenges of locating and characterizing subsurface contamination are magnified by the wide range of contaminant types; the wide variety of geological and hydrological conditions across the DOE complex; and the wide range of spatial resolutions at which this contamination must be located and characterized, from widely dispersed contamination in groundwater plumes to small isolated hot spots in waste burial grounds. Basic research is needed to support the development of the following capabilities to locate and characterize contamination in the subsurface and to characterize subsurface properties at the scales that control contaminant fate and transport behavior:

• Improved capabilities for characterizing the physical, chemical, and biological properties of the subsurface.

• Improved capabilities for characterizing physical, chemical, and biological heterogeneity, especially at the scales that control contaminant fate and transport behavior. Approaches that allow the identification and measurement of the heterogeneity features that control contaminant fate and transport to be obtained directly (i.e., without having to perform a detailed characterization of the subsurface) are especially needed.

• Improved capabilities for measuring contaminant migration and system properties that control contaminant movement.

• Methods to integrate data collected at different spatial and temporal scales to better estimate contaminant and subsurface properties and processes.

• Methods to integrate such data into conceptual models.

*Conceptual Modeling*

Existing conceptual and predictive models have often proven ineffective for understanding and predicting contaminant movement, especially at sites that have thick vadose (unsaturated) zones or complex subsurface characteristics. Accurate conceptualizations are essential for understanding the long-term fate of contaminants in the subsurface and the selection and application of appropriate corrective actions. Basic research explicitly focused on fundamental approaches and assumptions underlying conceptual model development could produce a toolbox of methodologies that are applicable to contaminated sites both inside and outside the DOE complex. This research should focus on the following topics:

• New observational and experimental approaches and tools for developing conceptual models that apply to complex subsurface environments, including such phenomena as colloidal transport and biologic activity.

• New approaches for incorporating geological, hydrological, chemical, and biological subsurface heterogeneity into conceptual model formulations at scales that dominate flow and transport behavior.

• Development of coupled-process models through experimental studies at variable scales and complexities that account for the interacting physical, chemical, and biological processes that govern contaminant fate and transport behavior.

• Methods to integrate process knowledge from small-scale tests and observations into model formulations, including methods for incorporating qualitative geological information from surface and near-surface observations into conceptual model formulations.

• Methods to measure and predict the scale dependency of parameter values.

• Approaches for establishing bounds on the accuracy of parameters and conceptual model estimates from field and experimental data.

The research needs outlined above call for more hypothesis-driven experimental approaches that address how to integrate the understanding of system behavior. This research will require expertise from a wide range of disciplines and must be conducted at scales ranging from the laboratory bench top to contaminated field sites. Moreover, to have long-term relevance to the DOE cleanup mission, this research must be focused on the kinds of subsurface environments and contamination problems commonly encountered at major DOE sites.

*Containment and Stabilization*

There has been an increasing emphasis on, and acceptance of, waste containment and stabilization in recent years, both in DOE and by regulatory agencies. Decreasing cleanup budgets, evaluations that show containment is a low-risk choice for some problems, and recognition that some contamination cannot be remediated either with

current technologies or conceivable new technologies are responsible for this change in philosophy. However, at some sites, containment and stabilization may be an interim measure and has its own set of associated technical problems. There is little understanding of the long-term performance of containment and stabilization systems, and there is a general absence of robust and cost-effective methods to validate that such systems are installed properly or that they can provide effective long-term protection.

The construction of stabilization and containment systems is properly within the province of applied technology development. However, basic research focused on the following topics will be needed to support this technology development effort:

- The mechanisms and kinetics of chemically and biologically mediated reactions that can be applied to new stabilization and containment approaches (e.g., reactions that can extend the use of reactive barriers to a greater range of contaminant types found at DOE sites) or that can be used to understand the long-term reversibility of chemical and biological stabilization methods.
- The physical, chemical, and biological reactions that occur among contaminants, soils, and barrier components so that more compatible and durable materials for containment and stabilization systems can be developed.
- The fluid transport behavior in conventional barrier systems, for example, understanding water infiltration into layered systems, including infiltration under partially saturated conditions and under the influences of capillary, chemical, electrical, and thermal gradients can be used to support the design of more effective infiltration barrier systems.
- The development of methods for assessing the long-term durability of containment and stabilization systems.

*Monitoring and Validation*

Monitoring and validation are necessary at both the front and the back ends of the site remediation process. At the front end, monitoring and validation are used to support the development of conceptual and predictive models of subsurface and contaminant behavior. At the back end, monitoring and validation are used to demonstrate the effectiveness of efforts to remove, treat, or especially to contain contamination and to gain regulatory acceptance for such corrective actions. Moreover, such monitoring and validation efforts can also improve the understanding of the contaminant fate and transport processes and can be used to recalibrate and revise conceptual and predictive models-important elements of the model building process.

The ability to monitor and validate is essential to the successful application of any corrective action to a subsurface contamination problem and regulatory acceptance of that action. However, the knowledge and technology bases to support these activities are not fully developed and are receiving little attention in EM's science and technology programs.

Many of the research opportunities for monitoring and validation have been covered in the research emphases discussed above. Basic research is needed on the following topics:

- Development of methods for designing monitoring systems to detect both current conditions and changes in system behaviors. These methods may involve the application of conceptual, mathematical, and statistical models to determine the types and locations of observation systems and prediction of the spatial and temporal resolutions at which observations need to be made.
- Development of validation processes. The research questions include (1) understanding what a representation of system behavior means and how to judge when a model provides an accurate representation of a system behavior—the model may give the right answers for the wrong reasons and thus may not be a good predictive tool; and (2) how to validate the future performance of the model or system behavior based on present-day measurements.
- Data for model validation. Determining the key measurements that are required to validate models and system behaviors, the spatial and temporal resolutions at which such measurements must be obtained, and the extent to which surrogate data (e.g., data from lab-scale testing facilities) can be used in validation efforts.
- Research to support the development of methods to monitor fluid and gaseous fluxes through the unsaturated zone, and for differentiating diurnal and seasonal changes from longer-term secular changes. These methods may involve both direct (e.g., in situ sensors) and indirect (e.g., using plants and animals) measurements over long time periods, particularly for harsh chemical environments characteristic of some DOE sites. This research should support the development of both the physical instrumentation and measurement techniques. The latter includes measurement strategies and data analysis (including statistical) approaches.

**Background**

The DOE has a 50-year legacy of environmental problems resulting from the production of nuclear weapons. Migration of some groundwater plumes threaten local and regional water sources, and in some cases, have adversely impacted off-site resources. The Department is responsible for the remediation of numerous landfills at facilities. These landfills are estimated to contain over three million cubic meters of radioactive and hazardous buried waste, some of which has migrated to the surrounding soils and groundwater. Currently available cleanup technologies are inadequate or unacceptable due to excessive costs, increased risks, long schedules, or the production of secondary waste streams.

Much of the defense-related contamination within the Department (the Complex has over 100 sites) occurs at six of the largest sites, as summarized below: Hanford, Washington; Idaho National Engineering and Environmental Laboratory (INEEL); Nevada Test Site (NTS); Oak Ridge Reservation (ORR), Tennessee; Rocky Flats Environmental Technology Site, Colorado, and Savannah River Site (SRS), South Carolina.

*Hanford Site, Washington*

Located in southeastern Washington State, Hanford encompasses 1450 square kilometers ($km^2$). From 1940 to 1989, nuclear weapons production took place, leaving several production reactors, chemical separations plants, and solid and liquid storage sites. The unsaturated, or vadose zone, on the central plateau area is 60–90 meters (m) thick. Here, several trillion liters of contaminated water and supernatant liquid were discharged or gravity-settled via, basins, cribs, trenches, tanks, etc., causing ground water and soil contamination from radionuclides (primarily, tritium, uranium, cesium-137, strontium-90, technecium-99, and iodine-129), metals (e.g. chromium), and DNAPLs (e.g. carbon tetrachloride). Prior to the 1990s, it was thought that the sorption capabilities of the soil in the vadose zone would limit migration of radionuclides; however, recent conceptual and mathematical models indicate more rapid migration potential to the groundwater.

The DOE created the Groundwater/Vadose Zone Integration Project, described at: *http://www.bhi-erc.com/projects/vadose* to coordinate cleanup activities at Hanford. A number of projects were awarded in the 1999

EMSP Vadose Zone research call that were highly relevant to science needs at the Hanford site. DOE/Richland has identified important, current scientific issues for research that are not being addressed by others at the Hanford site, or within the current EMSP program. Resolution of these issues would advance the state of remediation and site closure at Hanford and other DOE sites as well. These scientific issues may be found in a briefing document at: *http://www.bhi-erc.com/projects/vadose/sandt/stdocs.htm.* A 2001 report by the National Academy of Sciences and the National Research Council, titled ''Science and Technology for Environmental Cleanup at Hanford'' presents the successes and improvement areas of the science and technology program in the Hanford cleanup. Interested investigators are also referred to the Fiscal Year 2001, Subsurface Contaminations Technology Needs list at: *http://www.pnl.gov/stcg/fy01needs/ss/index.stm* for a detailed description of site research needs.

*Idaho National Engineering and Environmental Laboratory*

Located west of Idaho Falls, Idaho, INEEL occupies 2,300 $km^2$ of semi-arid desert along the northern margin of the Eastern Snake River Plain. The site was established as a building, testing, and operating station for various types of nuclear reactors and propulsion systems. Spent fuel from the naval reactor program is also managed there. Low levels of plutonium have been found in ground water beneath the Radioactive Waste Management Complex (RWMC)—a disposal site that received low-level and transuranic waste beginning in 1952. Pit 9, a trench within the RWMC, received an estimated 7,100 $m^3$ of sludge and solids contaminated with plutonium and americium. Similar to Hanford, at the time, the thick (60–240 m) unsaturated zone of volcanic strata was thought to impede contaminant migration to the underlying aquifers. Estimates today indicate travel times of tens of years, as opposed to estimates made in the 1950s and 1960s of thousand-year travel times. Interested investigators are referred to the INEEL Science and Technology Needs list at: *http://www.inel.gov/st-needs* for a detailed description of fundamental science studies that will assist, accelerate, or reduce the cost of cleanup.

*Nevada Test Site*

The NTS became the primary location for atmospheric and underground nuclear testing in 1951. The Test Site occupies 3,500 $km^2$ of land in southern Nevada, north of Las Vegas about 143 km. Surface and shallow soil are contaminated with americium, plutonium and depleted uranium, and with metals from nuclear detonations, safety test shots, and rocket engine testing. Underground nuclear testing resulted in over 300 million curies of subsurface contamination including, tritium, plutonium, uranium, cesium, strontium, and other fission products. Tritium plumes have been detected from testing locations because this radionuclide is very mobile in the water phase. Plutonium, once thought to be relatively immobile in groundwater due to low solubilities and strong sorption on mineral surfaces, was detected 1.3 km down gradient of the Benham test on Pahute Mesa, in a 600-m-deep monitoring well. The plutonium was detected on colloids, leaving open the question of the contribution of colloidal transport of plutonium versus the prompt injection effects of the detonation blast. Basic research in the mechanical and geochemical transport of plutonium is warranted. Other site-specific technology needs can be found at: *http://www.nv.doe.gov/programs/envmgmt/blackmtn/TDSTCGTechnologyNeeds.htm.*

*Oak Ridge Reservation*

Located about 10 km west of Knoxville, Tennessee, ORR was built originally to produce and chemically separate plutonium. Later, ORR produced isotopes and conducted isotopic and hazardous constituents research. ORR has three main facilities: the Oak Ridge National Laboratory supported plutonium production research and development, and the Y–12 and K–25 Plants produced highly enriched uranium via magnetic separation and gaseous diffusion, respectively. Wastes from these activities were placed in burial grounds, that have subsequently caused soil and water contamination in the Melton Valley Watershed, including strontium-90, tritium, cesium-137, and cobalt-60. Seepage from flooding of the waste trenches caused downgradient migration of radionuclides. The sediments behind White Oak Dam are significantly contaminated with radionuclides; White Oak Creek drains Melton Valley and the surface water contains tritium. Basic research is needed to better locate and characterize contamination hot spots in the burial grounds, as well as to improve the site conceptual and mathematical models, which include fractured-bedrock flow and karst hydrology. Containment systems, such as caps and barriers, and performance monitoring of engineered systems will be constructed under the cleanup program to verify and validate long-term performance and model results. Investigators are referred to the Technology Needs Database at: *http://www.em.doe.gov/techneed* to review Oak Ridge's needs list in the areas of characterization, treatment, storage, and disposal of hazardous and radioactive wastes.

*Rocky Flats*

Rocky Flats Environmental Technology Site is located on the western side of Denver, Colorado, and encompasses 140 hectares. Operations ceased in 1989 after years of fabrication and components assembly for nuclear weapons production. Materials used in these activities included plutonium and enriched uranium metals and oxides. Poor storage and disposal practices resulted in surface and groundwater contamination on and offsite, principally, soil contamination with americium, plutonium, and uranium. Cleanup and closure actions include removal and stabilization of contaminated media, construction of caps and barriers, and long term monitoring and surveillance. Investigators are referred to the Rocky flats website at: *http://www.aimsi.com/rockyflats/* to review science and technology needs, as well as related information.

*Savannah River Site*

The SRS was established in 1950 near Aiken, South Carolina, to produce radioactive isotopes for use in nuclear weapons production. Encompassing 800 $km^2$, the Site contains production reactors, chemical processing plants, and solid and liquid waste storage facilities. The Burial Ground Complex in the central part of SRS received low- and intermediate-level radioactive and mixed waste from 1952–1995. The source term of the waste is somewhat uncertain, and has leaked to groundwater creating plumes of hazardous chemicals, metals, and radionuclides. Closure of the Complex will include removal or stabilization of highly contaminated zones, an engineered and layered cover, possibly consisting of synthetic material, and long term monitoring and surveillance.

A persistent DNAPL plume of 140 hectares is associated with a manufacturing area in the northern portion of the site. From the 1950s to the 1980s, wastewater from fuel and target manufacturing seeped into the ground via an overflow basin, releasing solvents and heavy metals to the environment. A pump and treat system at the down gradient end of the plume

controls spreading, 400 monitoring wells are used to collect data for surveillance and modeling. Site engineers and scientists continue to look for new technologies and methods to better characterize, describe, and remediate the plume and its source(s). Investigators are referred to the SRS website at: *http://www.srs.gov/general/scitech/scitech.htm* to review science and technology needs, as well as related information.

**References**

**Note:** World Wide Web locations of these documents are provided where possible. For those without access to the World Wide Web, hard copies of these references may be obtained by writing Mark A. Gilbertson at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

DOE. 2001. A National Roadmap for the Vadose Zone Science & Technology. *http://www.inel.gov/vadosezone/*

DOE. 1998a. Accelerating Cleanup: Paths to Closure—June 1998. *http://www.em.doe.gov/closure*

DOE. 1998b. Report to Congress on the U.S. Department of Energy's Environmental Management Science Program—April 1998. *http://emsp.em.doe.gov/products.htm#rep*

DOE. 1996. Closing the Circle on the Splitting of the Atom: The Environmental Legacy of Nuclear Weapons Production in the United States and What the Department of Energy is Doing About It. The U.S. Department of Energy, Office of Environmental Management, Office of Strategic Planning and Analysis, Washington, DC. *http://www.energy.gov/library/sub/pubcenter.html*

National Research Council. 2001a. A Strategic Vision for Department of Energy Quality of Research and Development. National Academy Press, Washington, DC. *http://www.nap.edu/browse.html*

National Research Council. 2001b. Science and Technology for Environmental Cleanup at Hanford. National Academy Press, Washington, DC. *http://www.nap.edu/browse.html*

National Research Council. 2000. Research Needs in Subsurface Science, U.S. Department of Energy's Environmental Management Science Program. National Academy Press, Washington, DC. *http://www.nap.edu/browse.html*

National Research Council. 1997. Building an Environmental Management Science Program: Final Assessment. National Academy Press, Washington, DC. *http://www.nap.edu/browse.html*

National Research Council. 1995. Improving the Environment: An Evaluation of DOE's Environmental Management Program. National Academy Press, Washington, DC. *http://www.nap.edu/browse.html*

Richland Environmental Restoration Project, Groundwater/Vadose Zone Integration Project. *http://www.bhi-erc.com/projects/vadose/*

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on December 18, 2001.

**John Rodney Clark,**

*Associate Director of Science for Resource Management.*

[FR Doc. 02–284 Filed 1–4–02; 8:45 am]

**BILLING CODE 6450–02–U**

## DEPARTMENT OF ENERGY

### Notice of Restricted Eligibility; Support of Advanced Fossil Resource Utilization Research by Historically Black Colleges and Universities and Other Minority Institutions

**AGENCY:** National Energy Technology Laboratory (NETL), Department of Energy (DOE).

**ACTION:** Notice of restricted eligibility.

**SUMMARY:** The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award financial assistance (grants) to U.S. Historically Black Colleges and Universities (HBCU) and Other Minority Institutions (OMI) in support of innovative research and development of advanced concepts pertinent to fossil resource conversion and utilization. Applications will be subjected to a review by a DOE technical panel, and awards will be made to a select number of applicants based on the scientific merit of the application, relevant program policy factors, and the availability of funds. Collaboration with private industry is encouraged.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cynthia Y. Mitchell, U.S. Department of Energy, National Energy Technology Laboratory, Acquisition and Assistance Division, P.O. Box 10940, MS 921–107, Pittsburgh, PA 15236–0940, telephone: 412–386–4862, fax: 412–386–6137, e-mail: *mitchell@netl.doe.gov.* The solicitation (available in both Word Perfect 6.1 for Windows and Portable Document Format (PDF)) will be released on DOE's NETL World Wide Web Server Internet System (*http://www.netl.doe.gov/business/solicit*) on or about December 20, 2001. No telephone requests will be honored for solicitation copies.

**SUPPLEMENTARY INFORMATION:** *Title of Solicitation:* ''Support of Advanced Fossil Resource Utilization Research by Historically Black Colleges and Universities and Other Minority Institutions''

*Objectives:* Through Program Solicitation No. DE–PS26–02NT41430, the Department of Energy seeks applications from HBCU and OMI and HBCU/OMI-affiliated research institutes for innovative research and development of advanced concepts pertinent to fossil resource conversion and utilization. The resultant grants are intended to maintain and upgrade educational, training, and research capabilities of our HBCU/OMI in the fields of science and technology related to fossil energy resources; to foster private sector participation, collaboration, and interaction with HBCU/OMI; and to provide for the exchange of technical information and to raise the overall level of HBCU/OMI competitiveness with other institutions in the field of fossil energy research and development. Thus, the establishment of linkages between the HBCU/OMI and the private sector fossil energy community is critical to the success of this program, and consistent with the Nation's goal of ensuring a future supply of fossil fuel scientists and engineers from an previously under-utilized resource.

*Eligibility:* Eligibility for participation in this Program Solicitation is restricted to HBCU and OMI recognized by the Office for Civil Rights (OCR), U.S. Department of Education, and identified on the OCR's U.S. Department of Education list of U.S. Accredited Postsecondary Minority Institutions list in effect on the closing date of the Program Solicitation. *Applications submitted by any institution not on OCR's aforementioned list are ineligible for technical evaluation and award.* For information regarding the qualification criteria and process of becoming recognized by the Education Department's OCR as a ''Minority Institution,'' institutions should contact the Education Department directly at the following address: Mr. Peter A. McCabe, Office for Civil Rights, U.S. Department of Education, Washington DC 20202, telephone 202–205–9567.

**Note:** The Education Department should only be contacted on matters related to Institutional status; questions regarding the Program Solicitation should be directed to Ms. Mitchell at DOE.

Applications from HBCU/OMI-affiliated research institutes must be submitted through the college or

university with which they are affiliated. The university (*not* the university-affiliated research institute) will be the recipient of any resultant DOE grant award. Applications submitted in response to the solicitation must meet the following two criteria: the Principal Investigator or a Co-Principal Investigator must be a teaching professor at the submitting university listed in the application; *and* a minimum of 30% of personnel time invoiced under the grant is to pay for student assistance for each year of the grant. Although it is not required as an application qualification criterion, collaboration with the private sector is encouraged, and applications proposing private sector collaboration may be evaluated more favorably. The solicitation will contain a complete description of the technical evaluation factors and relative importance of each factor. Collaboration by the private sector with the HBCU/OMI may be in the form of cash cost sharing, consultation, HBCU/OMI access to industrial facilities or equipment, experimental data and/or equipment not available at the university, or as a subgrantee/subcontractor to the HBCU/OMI.

*Areas of Interest:* In order to develop and sustain a national program of HBCU/OMI research in advanced and fundamental fossil fuel studies, the Department of Energy is interested in innovative research and development of advanced concepts pertinent to fossil fuel conversion and utilization limited to the following nine (9) technical topics:

Topic 1—Advanced Environmental Control Technologies for Coal
Topic 2—Advanced Coal Utilization
Topic 3—Clean Fuels Technology
Topic 4—Heavy Oil Upgrading and Processing
Topic 5—Advanced Recovery, Completion/Stimulation, and Geoscience Technologies for Oil
Topic 6—Natural Gas Supply, Storage, and Processing
Topic 7—Infrastructure Reliability for Natural Gas
Topic 8—Fuel Cells
Topic 9—Facility/Student Exploratory Research Training Grants

**Note:** Technical Topic No. 9, *Faculty/Student Exploratory Research Training Grants,* is the *only* topic under this Program Solicitation wherein the inclusion or exclusion of private sector collaboration will not affect the technical evaluation of the application.

*Awards:* DOE anticipates issuing financial assistance (grants) for each project selected. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to funds available in this fiscal year. The limitation on the maximum DOE funding for each selected grant to be awarded under this Program Solicitation is as follows:

| | Maximum award |
|---|---|
| Topics 1–8: | |
| 0–12 months grant duration ..... | $85,000 |
| 13–24 months grant duration .... | 150,000 |
| 25–36 months grant duration .... | 200,000 |
| Topic 9: | |
| 0–12 months grant duration ..... | 20,000 |

Approximately $900,000 is planned for this solicitation. The total should provide support for four to eight research and development application selections (Topics 1–8), and approximately two to twelve faculty/student exploratory research training application selections (Topic 9).

*Solicitation Release Date:* The Program Solicitation is expected to be ready for release on or about December 20, 2001. Applications must be prepared and submitted in accordance with the instructions and forms contained in the Program Solicitation.

To be eligible, applications must be *received* by the designated DOE office by the closing time and date specified in the Program Solicitation (anticipated to be on or about February 1, 2002, at 5 PM Eastern Standard Time).

Issued in Pittsburgh, Pennsylvania on December 7, 2001.

**William R. Mundorf,**

*Contracting Officer, Acquisition and Assistance Division.*

[FR Doc. 02–283 Filed 1–4–02; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Science Financial Assistance Program Notice 02–14; Human Genome Program—Ethical, Legal, and Social Implications

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Office of Biological and Environmental Research (BER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications in support of the Ethical, Legal, and Social Implications (ELSI) subprogram of the Human Genome Program (HGP). Applications should focus on issues of (1) genetics and the workplace, (2) storage of genetic information and tissue samples, (3) education, or (4) complex or multigenic traits. The HGP is a coordinated, multidisciplinary, directed research effort aimed at obtaining a detailed understanding of the human genome at the molecular level. This particular research notice invites research applications that address ethical, legal, and social implications resulting from the use of information and knowledge resulting from the HGP.

**DATES:** Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 02–14, should be received by 4:30 p.m., E.S.T., January 24, 2002. Early submissions are encouraged. A response discussing the potential program relevance and encouraging or discouraging a formal application generally will be communicated within 20 days of receipt.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.S.T., March 28, 2002, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2002.

**ADDRESSES:** Preapplications, referencing Program Notice 02–14, should be sent by email to *Joanne.Corcoran@science.doe.gov* or by mail to Dr. Daniel W. Drell, Office of Biological and Environmental Research, SC–72, 19901 Germantown Road, Germantown, MD 20874–1290.

Formal applications, referencing Program Notice 02–14, should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–14. This address also must be used when submitting applications by U.S. Postal Service Express Mail, or any commercial mail delivery service, or when hand carried by the applicant. An original and seven copies of the application must be submitted.

**FOR FURTHER INFORMATION CONTACT:** Dr. Daniel W. Drell, Office of Biological and Environmental Research, SC–72, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–4742 or email: *daniel.drell@science.doe.gov.* The full text of Program Notice 02–14 is available via the Internet using the following web site address: *http://www.sc.doe.gov/production/grants/grants.html.*

**SUPPLEMENTARY INFORMATION:** The DOE encourages the submission of applications that will address, analyze, or anticipate ELSI issues associated with human genome research in four broad areas:

**I. Genetics and the Workplace**

Research is encouraged on the uses, impacts, implications of, and privacy of genetic information in the workplace. A particular emphasis of this solicitation is screening and monitoring programs that involve the collection and evaluation of worker genetic information. Research is also encouraged on the use of the workplace as a research venue and the resulting challenges for Institutional Review Boards (IRBs) that are responsible for the oversight of such activities. Research could explore historical experiences, current practices, international practices, the economics of, and lessons learned as they pertain to the collection and use of worker genetic information. Research can include issues arising from the creation, use, maintenance, privacy, and disclosure of genetic information obtained in workplace settings that can include, but are not limited to, workplaces at which DOE activities are taking place or have in the past.

**II. Storage of Information and Samples**

Research is encouraged on access to, and protection of genetic information stored in databases (especially computerized databases), or obtained from stored human tissue or sample archives. Research can explore threats to, issues surrounding, and protection of the confidentiality of genetic data in databanks and databases, approaches to anonymizing existing or new genetic records and samples, approaches to assessing the economics of genetic data collection, and explorations of the intellectual property protection of genetic information and genome research tools, technologies, and resources. Research can also explore the privacy and ownership issues associated with genetic data in records collected as part of occupational medical surveillance, as well as in academic genetics research.

**III. Education**

Research is encouraged to create and disseminate relevant educational materials in any appropriate medium that will enhance understanding of the ethical, legal, and social aspects of the HGP among the public or specified groups. A particular interest of this solicitation is the creation of innovative and novel materials for Institutional Review Boards (IRB) and Ethics Boards that review protocols involving the gathering of genetic information from genome investigators who work with human subjects, materials from which human genetic information can be obtained, or genetics research involving the workplace. Educational efforts should not target specific groups that have already been the subject of past ELSI awards (for further information about past awards under previous ELSI solicitations, see *http://www.ornl.gov/hgmis/elsi/elsi.html*). Applications for new mass media projects (e.g., TV documentaries) are not encouraged, nor are new high school- or college-level curricula, under this notice.

**IV. Complex or Multigenic Traits**

Research is encouraged that addresses the ethical, legal, and societal implications of advances in the scientific understanding of complex or multi-genic characteristics and conditions. Conditions may include, but are not limited to, behavioral conditions, diseases of aging, vulnerability to substance abuse, susceptibility to workplace exposure hazards (such as chemicals or radiation), or other common conditions with a partial genetic basis. This research may address:

(1) Gene—environment interactions that result in diseases or disease susceptibilities.

(2) Studies that explore the novel issues raised by research on complex conditions.

(3) The responses of institutions (e.g., courts, employers, companies or company health officers, schools, etc., including Federal Agencies) that must deal with ''genetic uncertainty,'' e.g., uncertainty about the significance of results of screening for susceptibility genes, uncertainty about the role of yet-undefined environmental influences, and uncertainty about the implications of different alleles at highly polymorphic genes when those alleles are not fully characterized.

All applications should demonstrate knowledge of the relevant literature, any related completed activities, and should include detailed plans for the gathering and analysis of factual information and the associated ethical, legal, and social implications. All applications should include, where appropriate, detailed discussion of human subjects protection issues, e.g., storage of, manipulation of, and access to personal genetic data. Provisions to ensure the inclusion of women, minorities, and potentially disabled individuals must be described, unless specific exclusions are scientifically necessary and justified in detail. All proposed research applications should provide a plan to disseminate results to the widest appropriate audience as well as a time line for their production and dissemination. In the absence of tangible products, rigorous assessments must be included to evaluate progress or outcomes. All applications should include letters of agreement to collaborate from potential collaborators; these letters should specify the contributions the collaborators intend to make if the application is accepted and funded.

If an educational effort for a specific group is proposed, the value to the Human Genome Program of that group or community should be explained in detail and measures for assessment of effectiveness described. In addition, the DOE encourages applications for the support of novel and innovative conferences focusing on the concerns addressed in this notice, e.g., privacy and access to research materials, workplace uses of genetic information, education of targeted groups such as IRBs and investigators, and susceptibility/sensitivity genes and polymorphisms. Educational and conference applications should demonstrate awareness of the relevant literature, include detailed plans for the accomplishment of project goals, and clearly describe the outcome or ''deliverables'' from the activity. For conference applications, a detailed and largely complete roster of speakers is necessary. Educational and conference applications must also demonstrate awareness of the need to reach the widest appropriate audience, and not be focused exclusively on a local community or group. For all conferences supported under this notice, a summary report is required following the conference. In applications that propose the production of educational materials, the DOE requests that samples of previous similar work by the producers and writers be submitted along with the application. In applications for the support of educational activities, the DOE requires inclusion of a plan for assessment of the effectiveness of the proposed activities.

DOE does not encourage applications dealing with issues consequent to the initiation or implementation of genetic testing protocols. Also, DOE does not encourage survey-based research, unless a compelling case is made that this methodology is critical to address an issue of uncommon significance. DOE generally discourages applications for geographically limited efforts (e.g., college or school curricula that will not be disseminated) and requests detailed

justification of the need for external support, beyond normal departmental and college resources, evidence of commitment from the parent department or college, and a dissemination plan. Applications for the writing of scholarly publications or books should include justifications for the relevance of the publications or book to the goals of the Human Genome Project as well as discussion of the estimated readership and impact. DOE ordinarily will not provide unlimited support for a funded program and thus strongly encourages the inclusion of plans for transition to self-sustaining status.

The dissemination of materials and research data in a timely manner is essential for progress toward the goals of the DOE Human Genome Program. The BER requires the timely sharing of resources and data. Applicants should, in their applications, discuss their plans for disseminating research results and materials that may include, where appropriate, publication in the open literature, wide-scale mailings, etc. Once BER and the applicant have agreed upon a distribution plan, it will become part of the award conditions. Funds to defray the costs of disseminating results and materials are allowable; however, such requests must be sufficiently detailed and adequately justified. Applicants should also provide time lines projecting progress toward achieving proposed goals.

**Additional Request for Small Grants**

The DOE also encourages small grant applications, to a maximum of $33,000 total costs, for innovative and exploratory activities within the previously described areas. Such exploratory grants could be used to carry out pilot or investigative research on an issue consistent with any of the above areas of ELSI research, support a sabbatical leave to organize and hold a conference, or to initiate start-up studies that could generate preliminary data for a subsequent grant application. This program could be appropriate for a research scientist interested in exploring a related area of ELSI research, or a scholar conducting ELSI research of one type to explore an ELSI research topic of a different type. Such applications must use the standard DOE application forms that can be found on the Internet at: *http://www.sc.doe.gov/production/grants/grants.html.* The description of research activities should not be more than five pages and curriculum vitae should not exceed two pages. These small grants, which will be peer reviewed, will not extend beyond one year from the award date. It is expected that up to seven of these awards might be made in FY 2002. As with larger applications to this notice, applications should be sent to the address given above.

**Program Funding**

It is anticipated that approximately $800,000 will be available for multiple grant awards (including any small grants) to be made during Fiscal Year 2002, contingent upon the availability of appropriated funds. Multiple year funding of grant awards is expected, and is also contingent upon the availability of funds. Previous awards have ranged from $50,000 per year up to $500,000 per year with terms from one to three years; most awards average about $200,000 per year for two or three years (not applicable for any small grants as stated above). Similar award sizes are anticipated for new grants. Generally, conference awards do not exceed $25,000 and indirect costs are not allowed as part of conference grant awards.

**Collaboration**

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, DOE National Laboratories, industry, non-profit organizations, other federal laboratories and federally funded research and development centers (FFRDCs), where appropriate, and to incorporate cost sharing and/or consortia wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the Internet at: *http://www.sc.doe.gov/production/grants/Colab.html.*

**Preapplications**

A brief preapplication should be submitted. The preapplication should identify, on the cover sheet, the institution, Principal Investigator name, address, telephone, fax and email address, title of the project, and the field of scientific research. The preapplication should consist of a two to three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the DOE's Human Genome Program. Preapplications are strongly encouraged but not required prior to submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Applications will be subjected to a scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;

2. Appropriateness of the Proposed Method or Approach;

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

DOE policy requires that potential applicants adhere to 10 CFR part 745 ''Protection of Human Subjects'', or such later revision of those guidelines as may be published in the **Federal Register**.

The Office of Science, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules,'' which is available via the World Wide Web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf,* (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance number for this program is

81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC December 21, 2001.

**John Rodney Clark,**

*Associate Director of Science for Resource Management.*

[FR Doc. 02–282 Filed 1–4–02; 8:45 am]

BILLING CODE 6450–02–U

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER01–2814–000, ER01–2814–001]**

## Citizens Energy Corporation; Notice of Issuance of Order

December 31, 2001.

Citizens Energy Corporation (Citizens) submitted for filing a rate schedule under which Citizens will engage in wholesale electric power and energy transactions at market-based rates. Citizens also requested waiver of various Commission regulations. In particular, Citizens requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Citizens.

On December 19, 2001, pursuant to delegated authority, the Director, OMTR/Tariffs and Rates-East, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Citizens should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Citizens is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Citizens, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Citizens' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 18, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

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

*Acting Secretary.*

[FR Doc. 02–279 Filed 1–4–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC02–38–000, et al.]**

## Montana-Dakota Utilities Co., et al.; Electric Rate and Corporate Regulation Filings

December 31, 2001.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

### 1. Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.

[Docket No. EC02–38–000]

Take notice that on December 26, 2001, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (Montana-Dakota) tendered for filing with the Federal Energy Regulatory Commission an Application to Transfer Operational Control Over Transmission Facilities to the Midwest Independent Transmission System Operator, Inc. under Section 203 of the Federal Power Act.

*Comment Date:* January 16, 2002.

### 2. Southern California Edison Company

[Docket No. ER02–608–000]

Take notice that on December 26, 2001, Southern California Edison Company (SCE) tendered for filing an amendment to the Firm Transmission Service Agreement (Victorville-Lugo/Miday) between SCE and M–S–R Public Power Agency (M–S–R) First Revised Rate Schedule FERC No. 339 (M–S–R Agreement)

The amendment to the M–S–R Agreement clarified scheduling obligations under that Agreement by deleting provisions concerning scheduling and dispatch service.

A copy of this filing was served upon the Public Utilities Commission of the State of California, the ISO and M–S–R.

*Comment Date:* January 16, 2002.

### 3. ExTex LaPorte Limited Partnership

[Docket No. EG02–60–000]

Take notice that on December 21, 2001, ExTex LaPorte Limited Partnership (ExTex) filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935 and Part 365 of the Commissions regulations.

ExTex currently is an EWG and owns and operates a 165 MW combustion turbine generating facility located in LaPorte, Texas. ExTex will acquire two additional generating facilities located in the Electric Reliability Council of Texas. ExTex will acquire the Handley Steam Electric Station (''Handley'') and the Mountain Creek Steam Electric Station (Mountain Creek). Handley is a 1,440 MW gas-fired steam turbine generating facility located in Fort Worth, Texas. Mountain Creek is 894 MW gas-fired steam turbine generating facility located near Dallas, Texas.

*Comment Date:* January 22, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

### 4. Kansas City Power & Light Company

[Docket No. ER99–1005–001]

Take notice that on December 27, 2001, Kansas City Power & Light Company (KCPL) tendered for filing an updated market power study under KCPLs market-based rate tariff.

Copies of this filing have been served on the Kansas Corporation Commission and the Missouri Public Service Commission.

*Comment Date:* January 17, 2002.

### 5. Cleco Power LLC

[Docket Nos. ER01–1099–007, ER01–3095–001, and ER02–54–001]

Take notice that on December 26, 2001, Cleco Power LLC (Cleco Power) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Notice of Cancellation pursuant to 18 CFR 35.15 and Cancellation Sheets, effective January 1, 2002, canceling Cleco Utility Group Inc.'s (Cleco Utility) Rate Schedules 6, 12, and 18 and all supplements. Cleco Power simultaneously filed Cleco Power

Rate Schedules 9 and 15, which are essentially the same as Cleco Utility Rate Schedules 12 and 18, respectively. Cleco Power states that Cleco Utility's Rate Schedule 6 with Gulf States Utilities Company will not be filed as a Cleco Power Rate Schedule because the agreement with Gulf States Utilities Company has expired by its own terms.

Take notice that Cleco Power filed Substitute Original Sheet Nos. 77 and 78 to Cleco Powers FERC Electric Tariff, Original Volume No. 1. Cleco Power also gave notice that Cleco Utility service agreements T1S4 and T1S19, that were canceled effective May 29, 2001, will not be refiled as Cleco Power service agreements because service is no longer being provided under them.

Cleco Power also filed a Third Substitute Original Sheet No. 26 to RS 12 with the City of Lafayette, Louisiana.

*Comment Date:* January 16, 2002.

**6. Carolina Power & Light Company and Florida Power Corporation**

[Docket Nos. ER01–1807–008, and ER01–2020–005]

Take notice that on December 27, 2001 Progress Energy, Inc. (Progress Energy), on behalf of Florida Power Corporation (FPC), tendered for filing revised service agreements (Revised Service Agreements) under FPC's open-access transmission tariff, FERC Electric Tariff, Second Revised Volume No. 6 (FPCs OATT), in compliance with the Commissions June 25, 2001, September 21, 2001 and November 26, 2001 orders in these proceedings.

See Carolina Power & Light Co. and Florida Power Corp., 95 FERC ¶ 61,429 (2001) (Carolina Power). Progress Energy also tendered: (1) An index of FPCs Revised Service Agreements (FPC Index); (2) revised versions of indices that were contained in the November 26, 2001 filing in these proceedings; (3) Notices of Cancellation of service agreements under both FPCs OATT and Carolina Power & Light Company's (CP&L), FERC Electric Tariff, Third Revised Volume No. 3 (CP&L's OATT); (4) canceled service agreement cover sheets to cancel service agreements under both FPCs OATT and CP&L's OATT in compliance with Order No. 614; and (5) First Revised Service Agreements filed under both FPCs OATT and CP&Ls OATT to reflect the succession of one entity by another.

Progress Energy respectfully requests that the Revised Service Agreements become effective on the date set forth on the cover sheet for each Revised Service Agreement and that the Notices of Cancellation become effective as of February 25, 2002.

Copies of the filing were served upon the Commissions official service list and the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Florida Public Service Commission.

*Comment Date:* January 17, 2002.

**7. New York Independent System Operator, Inc.**

[Docket No. ER01–2967–002]

Take notice that on December 26, 2001, the New York System Operator, Inc. (NYISO) filed revisions to Attachment S of its Open Access Transmission Tariff, which contains rules to allocate responsibility for the cost of new interconnection facilities, pursuant to the Commission's Order issued on October 26, 2001, in the above-captioned docket.

The NYISO has requested an effective date of September 26, 2001, for the compliance filing, the effective date granted in the Commission's Order issued on October 26, 2001.

The NYISO has served a copy of the compliance filing on each person designated on the official service list maintained by the Commission for the above-captioned docket.

*Comment Date:* January 16, 2002.

**8. New York Independent System Operator, Inc.**

[Docket No. ER01–2967–003]

Take notice that on December 27, 2001, the New York System Operator, Inc. (NYISO) filed revisions to Sheet Nos. 39 and 39A of its Open Access Transmission Tariff, to complete the compliance filing made on December 26, 2001 pursuant to the Commission's Order issued on October 26, 2001, in the above-captioned docket.

The NYISO has requested an effective date of September 26, 2001, for the compliance filing, the effective date granted in the Commission's Order issued on October 26, 2001.

The NYISO has served a copy of the compliance filing on each person designated on the official service list maintained by the Commission for the above-captioned docket.

*Comment Date:* January 17, 2002.

**9. Southern Indiana Gas and Electric Company**

[Docket No. ER02–603–000]

Take notice that on December 26, 2001, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing an Agreement for Firm Point-To-Point Transmission Service with Dynegy Power Marketing, Inc. under Part II of SIGECO's Transmission Services Tariff, Docket No. 0A96–117–000, filed July 9, 1996. To date, no Service has been provided by SIGECO to Dynegy Power Marketing, Inc. pursuant to this Agreement.

SIGECO requests waiver of the 60-day prior notice requirement to allow the service agreements to become effective as of November 15, 2001.

*Comment Date:* January 16, 2002.

**10. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company**

[Docket No. ER02–604–000]

Take notice that on December 26, 2001, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with OGE Energy Resources, Inc. and Florida Power Corporation.

Ameren Energy seeks Commission acceptance of these service agreements effective December 1, 2001.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the respective counterparties.

*Comment Date:* January 16, 2002.

**11. Puget Sound Energy, Inc.**

[Docket No. ER02–605–000]

Take notice that on December 26, 2001, Puget Sound Energy, Inc. (PSE), tendered for filing a proposed Sixth Revised Volume No. 7 of its Open Access Transmission Tariff to reflect its reclassification of transmission and distribution facilities, desegregate and reduce its rates in accordance with the reclassification, and make other non-substantive changes in compliance with Order 614.

PSE requests an effective date of January 1, 2002 for the above-described tariff changes.

Copies of the filing were served on PSE's jurisdictional customers and the Washington State Utilities and Transportation Commission.

*Comment Date:* January 16, 2002.

**12. PJM Interconnection, L.L.C.**

[Docket No. ER02–606–000]

Take notice that on December 26, 2001, PJM Interconnection, L.L.C. (PJM), submitted for filing amendments to Schedules 11 and 11A the Amended and Restated Operating Agreement of

PJM Interconnection, L.L.C. (Operating Agreement) to facilitate operation of the capacity credit markets in both PJM and PJM West (when it becomes effective) and to clarify certain provisions. Specifically the amendments eliminate (1) reference to ''Fixed Block'' bids, which are not contemplated; (2) conducting multiple Daily Markets on a Friday or day before a holiday; and (3) the requirement that Sell Offers and Buy Bids for the Daily Capacity market must be received on the day on which the market is to be conducted. Certain sections in Schedule 11 of the Operating Agreement also are deleted because the transition period for the capacity market in the PJM control area has expired and the sections no longer apply.

PJM is requesting an effective date for the amendments of January 1, 2002.

Copies of this filing were served upon all PJM members, Allegheny Power, and each state electric utility regulatory commission in the PJM control area and PJM West region.

*Comment Date:* January 16, 2002.

**13. Michigan Electric Transmission Company**

[Docket No. ER02–607–000]

Take notice that on December 26, 2001, Michigan Electric Transmission Company (METC) tendered for filing an unexecuted Generator Interconnection and Operating Agreement between METC and Mirant Zeeland, LLC.

METC requested that the Agreement become effective December 26, 2001.

Copies of the filing were served upon Generator and the Michigan Public Service Commission.

*Comment Date:* January 16, 2002.

**Standard Paragraph**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

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

*Acting Secretary.*

[FR Doc. 02–278 Filed 1–4–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 31, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

*a. Type of Application:* Preliminary Permit.

*b. Project No.:* 12137–000.

*c. Date filed:* November 7, 2001, supplemented December 28, 2001.

*d. Applicant:* Cambria Somerset Authority.

*e. Name of Project:* Que Pump Storage Project.

*f. Location:* At the existing Quemahoning Reservoir on Stonycreek River, in Somerset County, Pennsylvania. The project does not utilize federal or tribal lands.

*g. Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

*h. Applicant Contact:* Paul C. Rizzo, Paul C. Rizzo Associates, Inc., 105 Mall Boulevard, Monroeville, Pennsylvania 15146, (412) 856–9700.

*i. FERC Contact:* Regina Saizan, (202) 219–2673.

*j. Deadline for filing motions to intervene, protests, and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the project number (P–12137–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

*k. Description of Project:* The proposed project would consist of: (1) A proposed 30-acre upper reservoir, (2) a proposed concrete intake structure, (3) a proposed 900-foot-long, 59-inch-diameter steel penstock, (4) a proposed powerhouse containing two generating units having a total installed capacity of 100 MW, (5) the existing Quemahoning Reservoir (lower reservoir), (6) a proposed 2-mile-long, 23 kV transmission line, and (7) appurtenant facilities. The project would have an annual generation of 156 GWh.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business

address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

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

*Acting Secretary.*

[FR Doc. 02–280 Filed 1–4–02; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[TX–FRL–7126–1]**

## Notice of Deficiency for Clean Air Act Operating Permits Program; State of Texas

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

**ACTION:** Notice of deficiency.

**SUMMARY:** Pursuant to its authority under section 502(i) of the Clean Air Act (Act) and the implementing regulations at 40 CFR 70.10(b)(1), EPA is publishing this Notice of Deficiency (NOD) for the Texas Clean Air Act title V Operating Permits Program. The Notice of Deficiency is based upon EPA's finding that the State's periodic monitoring regulations, compliance assurance monitoring (CAM) regulations, periodic monitoring and CAM general operating permits (GOPs), statement of basis requirement, applicable requirement definition, and potential to emit registration regulation do not meet the minimum federal requirements of the Act and 40 CFR part 70. Publication of this notice is a prerequisite for withdrawal of Texas' title V program approval, but EPA is not withdrawing the program through this action.

**EFFECTIVE DATE:** January 7, 2002. Because this NOD is an adjudication and not a final rule, the Administrative Procedure Act's 30–day deferral of the effective date of a rule does not apply.

**FOR FURTHER INFORMATION CONTACT:** Jole C. Luehrs, Chief, Air Permits Section, Multimedia Planning & Permitting Division, Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–7250.

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us,'' or ''our'' means EPA.

**Table of Contents**

I. Description of Action
II. Deficiencies
A. Periodic Monitoring Regulations
B. Compliance Assurance Monitoring Regulations
C. Periodic Monitoring and Compliance Assurance Monitoring General Operating Permits
D. Statement of Basis Requirement
E. Applicable Requirement Definition
F. Potential to Emit Registration Regulation
III. Effect of Notice of Deficiency
IV. Administrative Requirements

### I. Description of Action

We are publishing this NOD for the Texas Clean Air Act (CAA or Act) title V program, which was granted interim approval on June 25, 1996. 61 FR 32693.[1] On May 22, 2000, we promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001. 65 FR 32035. The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, we agreed to publish a document in the **Federal Register** that would alert the public that it may identify and bring to our attention alleged programmatic and/or implementation deficiencies in title V programs, and that we would respond to the public's allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** document (March 11, 2001).

Public Citizen, on behalf of the American Lung Association of Texas, Environmental Defense, the law firm of Henry, Lowerre & Federick, Lone Star Chapter of the Sierra Club, Texas Center for Policy Studies, Sustainable Energy and Economic Development Coalition, Texas Campaign for the Environment, Galveston Houston Association for Smog Prevention, Neighbors for Neighbors, and Texas Impact (collectively referred to as ''commenters'') filed comments with EPA alleging several deficiencies with respect to the Texas title V program (Comment Letter). We have completed our review of those comments. We have identified deficiencies relating to Texas' periodic monitoring regulations, CAM regulations, periodic monitoring and CAM GOPs, statement of basis requirement, applicable requirement definition, and potential to emit registration regulation. These deficiencies are discussed below.

Under EPA's permitting regulations, citizens may, at any time, petition EPA regarding alleged deficiencies in state title V operating permitting programs. In addition, EPA may identify deficiencies

[1] On December 6, 2001, we promulgated full approval of Texas' Operating Permits Program. 66 FR 63318.

on its own. If, in the future, EPA agrees with a new citizen petition or otherwise identifies deficiencies, EPA may issue a new NOD or take other affirmative actions.

## II. Deficiencies

Below is a discussion of the comments that we have identified as deficiencies, and by this notice are requesting the State to correct the deficiencies.

### *A. Periodic Monitoring Regulations*

The commenters allege that instead of ensuring that every title V permit includes periodic monitoring, as required by 40 CFR 70.6(a)(3)(i)(B), 30 TAC 122.142(c) makes periodic monitoring optional because it only requires permits to include periodic monitoring ''as required by the executive director.'' [2] Further, the commenters contend that the Texas Natural Resource Conservation Commission's (TNRCC) rules specifically state that no facility need submit an application for periodic monitoring for approximately two years, or longer.[3] Therefore, the commenters conclude that these provisions are inconsistent with federal requirements. The commenters also assert that TNRCC's failure to require timely periodic monitoring has caused the issuance of numerous defective title V permits. Comment Letter at 12.

According to TNRCC,

> periodic monitoring is implemented in two phases. The first phase is at initial issuance for those emission limitations or standards with no monitoring, testing, recordkeeping, or reporting. The second phase is through the GOPs for those emission limitations or standards which only require a one-time test at start-up or when requested by the EPA. Each permit will contain periodic monitoring as appropriate.

26 *TexReg* 3747, 3785 (May 25, 2001).[4]

However, TNRCC's approach to implementing periodic monitoring does not comply with the requirements of part 70. The requirement for periodic monitoring is set forth in 40 CFR 70.6(a)(3)(i)(B), which requires that each permit must include:

> where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit * * *.''

A review of the relevant Texas regulations reveals that Texas' periodic monitoring regulations do not meet the requirements of part 70 and must be revised. Under 30 TAC 122.600, the periodic monitoring requirements of 30 TAC 122.142(c) are implemented through a periodic monitoring GOP, or a periodic monitoring case by case determination, in accordance with 30 TAC Chapter 122, Subchapter G—Periodic Monitoring.[5] TNRCC's use of a phased approach through the GOP process does not ensure that all permits have periodic monitoring *when they are issued*, as required by 40 CFR 70.6(a)(3)(i)(B). The regulations do not meet the requirements of part 70 because a facility does not have to apply for a periodic monitoring GOP until two years after the periodic monitoring GOP has been issued. 30 TAC 122.604(a)(1). Since the two year period starts after issuance of the GOP, a source's title V permit could be in effect for longer than two years before periodic monitoring is incorporated into the permit.[6] Therefore, this regulatory deficiency must be corrected. TNRCC must revise its regulations to ensure that *all title V permits, including all GOPs, when issued,* contain periodic monitoring requirements that meet the requirements of 40 CFR 70.6(a)(3)(i)(B).

In addition, in implementing the periodic monitoring requirement, TNRCC must ensure that each permit includes monitoring sufficient to assure compliance with the terms and conditions of the permit. *See* 40 CFR 70.6(c)(1).[7] Each permit must also include periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. *See* 40 CFR 70.6(a)(3)(i)(B). Thus, if the periodic monitoring for a particular applicable requirement is inadequate to assure compliance with the terms and conditions of the permit, 40 CFR 70.6(c)(1) and 30 TAC 122.142(b)(2)(B)(ii) require TNRCC to provide enhanced monitoring to assure compliance with the permit.

### B. Compliance Assurance Monitoring Regulations

The commenters allege that TNRCC's permit content rules do not require that title V permits include testing and monitoring sufficient to assure compliance. Instead, the rules provide that applications for CAM need not be submitted for approximately two years, and maybe longer. 30 TAC 122.704.[8] Thus, the commenters assert that TNRCC's failure to require sufficient testing and monitoring in its title V permits is a defect in its title V program and has resulted in the issuance of many ineffective and incomplete title V permits. Comment Letter at 12—14.

According to TNRCC, CAM, like periodic monitoring, is also being implemented in a phased approach:

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[2] 30 TAC 122.142(c) provides that ''each permit shall contain periodic monitoring requirements, as required by the executive director, that are designed to produce data that are representative of the emission unit's compliance with the applicable requirements.''

[3] 30 TAC 122.604(a)(1) & (2) provide that ''for an emission unit that is subject to an emission limitation or standard on or before the issuance date of a periodic monitoring GOP containing the emission limitation or standard, the permit holder shall submit an application no later than 30 days after the end of the second permit anniversary following issuance of the periodic monitoring GOP. For an emission unit that becomes subject to an emission limitation or standard after the issuance date of a periodic monitoring GOP containing the emission limitation or standard, the permit holder shall submit an application no later than 30 days after the second permit anniversary following the date that the emission unit became subject to the emission limitation or standard.''

The provisions of 30 TAC Chapter 122, Subchapter G (§ 122.600–122.612) ''[do] not apply to emission limitations or standards for which the executive director has determined that the applicable requirement has sufficient periodic monitoring (which may consistent of recordkeeping * * *.'' 30 TAC 122.602(b).

[4] However, a one-time test is not considered periodic monitoring. *Appalachian Power Company v. EPA*, 208 F.3d 1015, 1028 (D.C. Cir. 2000).

[5] 30 TAC 122.600(b) does allow TNRCC to establish periodic monitoring requirements through the permitting process for specific emission limitations or standards to satisfy 30 TAC 122.142(c).

[6] If the emission unit becomes subject to an emission limitation or standard after the issuance date of a period monitoring GOP, the permit holder must submit the application no later than 30 days after the end of the second permit anniversary following the date that the emission unit became subject to the emission limitation or standard. 30 TAC 122.604(a)(2).

[7] Also note that

> Where the applicable requirement already requires periodic testing or instrumental or non-instrumental monitoring, however, * * * the periodic monitoring rule in § 70.6(a)(3) does not apply even if that monitoring is not sufficient to assure compliance. In such cases, the separate regulatory standard at § 70.6(c)(1) applies instead. By its terms, § 70.6(c0(1)—like the statutory provisions it implements—calls for sufficiency reviews of periodic testing and monitoring in applicable requirements, and enhancement of that testing or monitoring through the permit as necessary to be sufficient to assure compliance with the terms and conditions of the permit. *In the Matter of Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants*, Petition No. VIII–00–1 at 18–19 (Administrator November 16, 2000).

[8] 30 TAC 122.704(a)(1) & (2) provide that ''for an emission unit that subject to this subchapter on or before the issuance unit that subject to this subchapter on or before the issuance date of a CAM GOP containing an emission limitation or standard that applies to that emission unit, the permit holder shall submit an application no later than 30 days after the end of the second permit anniversary following issuance of the CAM GOP. For an emission unit that becomes subject to this subchapter after the issuance date of a CAM GOP that applies to that emission unit, the permit holder shall submit an application no later than 30 days after the second permit anniversary following the date that the emission unit became subject to this subchapter.''

The executive director is implementing CAM and periodic monitoring through a phased approach based on permit issuance and SIC codes. The commission considered several factors when developing the schedule for application due dates. Due to the technical requirements in 40 CFR part 64, compliance with CAM and periodic monitoring may require permit holders to purchase and install new equipment or conduct performance testing. The application submittal schedule should allow permit holders a reasonable amount of time to budget for, purchase, install, and test equipment necessary to comply with CAM and periodic monitoring requirements. Furthermore, the schedule allows the executive director time to develop comprehensive monitoring options for inclusion in various CAM and periodic monitoring GOPs issued over time. Finally, under the schedule, permit holders will submit applications to the executive director in manageable numbers throughout each calendar year. The executive director will be able to review these applications in a more timely fashion than if all applications were due at the same time.

26 *TexReg* at 3786–87.

CAM is implemented through 40 CFR part 64 and 40 CFR 70.6(a)(3)(i)(A). 40 CFR 64.5 provides that CAM applies at permit renewal unless the permit holder has not filed a title V permit application by April 20, 1998, or the title V permit application has not been determined to be administratively complete by April 20, 1998. CAM also applies to a title V permit holder who filed a significant permit revision under title V after April 20, 1998. However, in this case, CAM would only apply to pollutant specific emission units for which the proposed permit revision is applicable.

40 CFR 70.6(a)(3)(i)(A) requires that each permit include ''all monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including part 64 of this chapter [CAM] * * * ''

The TNRCC implements CAM through either CAM GOPs or a CAM case-by case determination, in accordance with 30 TAC Chapter 122, Subchapter G—Compliance Assurance Monitoring. 30 TAC 122.700(a). The TNRCC's use of a phased approach does not ensure that all permits will have the CAM required by 40 CFR 70.6(a)(3)(i)(A), according to the schedule in 40 CFR 64.5 because a facility does not have to apply for a CAM GOP until two years after the CAM GOP has been issued. Since the two year period starts after issuance of the GOP, a source's title V permit could be renewed (or a significant permit revision issued) before CAM is incorporated into the permit.[9] The TNRCC regulations do not meet the requirements of the Act and part 70 and TNRCC must revise its regulations to ensure that all title V permits, including all GOPs, will have the CAM required by CFR 70.6(a)(3)(i)(A), according to the schedule in 40 CFR 64.5.

*C. Periodic Monitoring and Compliance Assurance Monitoring General Operating Permits*

The commenters allege that periodic monitoring and CAM are permit conditions which are required to be included in each title V permit. The TNRCC, however, is issuing title V permits without periodic monitoring or CAM, and allowing facilities to utilize the GOP process to adopt periodic monitoring and CAM. The commenters assert that because periodic monitoring and CAM are permit conditions, and not operating permits, the periodic monitoring and CAM GOPs do not comply with the requirement in 40 CFR 70.6(d) that GOPs must ''comply with all requirements applicable to other part 70 permits.'' For example, the commenters claim the periodic monitoring and CAM GOPs do not include enforceable emission limitations and standards, a schedule of compliance, and a requirement that the permittee submit to the permitting authority no less often than every six months, the results of any required monitoring, as required by title V. The commenters also assert that the CAM and periodic monitoring GOPs do not apply to ''numerous similar sources'', as required by 40 CFR 70.6(d). They apply statewide to any source that has to comply with applicable requirements which are listed in the GOP. Therefore, the commenters believe that CAM and periodic monitoring GOPs simply do not meet title V's definition of or requirements for general permits. Comment Letter at 21–22.

The TNRCC argues that

> the CAM and periodic monitoring GOPs were not designed to mimic a [site operating permit (SOP)]; therefore, the content will not be identical to the requirements of 40 CFR 70.6(a) and (b). The CAM and periodic monitoring GOPs are unique in that the information submitted will become a part of the existing SOP or GOP and are supplemental to an existing operating permit. The commission believes that Part 70 implements the requirements listed in 42 U.S.C. 7661b, Permit Applications. The commission believes its application requirement is consistent with 40 CFR 70.6(a) and (b). These requirements have been incorporated into a previously issued SOP or GOP and are not required for CAM or periodic monitoring GOP applications.

26 *TexReg* at 3786.

The TNRCC's use of GOPs to implement periodic monitoring and CAM does not comply with part 70. The requirements for GOPs are set forth in 40 CFR 70.6(d). 40 CFR 70.6(d)(1) provides that ''any general permit shall comply with all requirements applicable to other part 70 permits.'' The requirements for part 70 permits are set forth in 40 CFR 70.6. A review of Periodic Monitoring GOP No. 1 and CAM GOP No. 1 shows that the terms and conditions of these GOPs only relate to the respective monitoring requirements, monitoring options, and related monitoring requirements for certain applicable requirements.[10] Thus, they are missing a number of the requirements of 40 CFR 70.6, and therefore do not meet the requirements for GOPs set forth in 40 CFR 70.6(d). The fact that the missing requirements may be in another permit or permit application is irrelevant. 40 CFR 70.6(d) requires that all the requirements of 40 CFR 70.6 be included in a GOP. Therefore, Texas must revise its regulations to ensure that each GOP issued includes all of the requirements in 40 CFR 70.6, including the periodic monitoring and CAM requirements discussed in Sections II.A. and B above.[11] Furthermore, Texas must ensure that any GOP issued covers similar sources, as required by 40 CFR 70.6(d).

*D. Statement of Basis Requirement*

The commenters claim that TNRCC's rules do not require that it prepare and make available a statement setting forth the ''legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions)'', otherwise known as a ''statement of basis''.[12] Further, the commenters assert that there have been no statements of basis in the title V facility files they have reviewed. The files, however, do include a ''Technical Summary'', which includes a process description and tracks the facility's movement through the permitting process. The commenters claim that these ''Technical Summaries'' do not

[9] If the emission unit that becomes subject to Subchapter G after the issuance date of a CAM GOP that applies to that emission unit, the permit holder must submit an application no later than 30 days after the second permit anniversary following the date that the emission unit became subject to this subchapter. 30 TAC 122.704(a)(2).

[10] Periodic monitoring GOP No. 1 and CAM GOP No. 1 apply to nine different New Source Performance Standards, 40 CFR part 60, Subparts F, Y, CC, DD, HH, LL, NN, OOO, PPP; 30 TAC 111.111 (Visible Emissions), 30 TAC 111.151 (Emission Limits on Nonagricultural Processes), and 30 TAC 111.171 (Emission Limits on Agricultural Processes).

[11] Inclusion of CAM in GOPs is subject to the schedule set forth in 40 CFR 64.5.

[12] 40 CFR 70.7(a)(5).

explain the basis for the draft permit conditions. Therefore, the commenters contend that EPA should require TNRCC to prepare a statement of basis that meets the part 70 requirements. Comment Letter at 21–22.

According to TNRCC:

> [t]he executive director does not prepare a specific ''statement of basis'' for each permit, but rather has implemented this Part 70 provision by developing a permit that states a regulatory citation for each applicable requirement. The commission is unaware of any self-implementing statutory requirements that do not have parallel regulatory provisions. These permit conditions are based on the application and the technical review which includes a site inspection. The commission believes including this detail in the permits meets the requirements of Part 70 for including a statement of basis.

26 *TexReg* at 3769–70.

The TNRCC's approach to the ''statement of basis'' requirement does not comply with the requirements of part 70. 40 CFR 70.7(a)(5) requires that ''[t]he permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA and to any other person who requests it.'' For example, in the *Fort James Camas Mill* title V Petition Response, EPA stated that this section required that ''the rationale for the selected monitoring method must be clear and documented in the permit record.'' *In the Matter of Fort James Camas Mill*, Petition No. X–1999–1 at 8 (Administrator December 22, 2000).

Our review of TNRCC's regulations reveals that there is no state regulation corresponding to 40 CFR 70.7(a)(5). The ''Technical Summaries'' do not set forth the legal and factual basis for the draft permit conditions. Furthermore, the elements of the statement of basis may change depending on the type and complexity of the facility, and would also be subject to change because of future regulatory revisions. Accordingly, a statement of basis should include, but is not limited to, a description of the facility, a discussion of any operational flexibility that will be utilized at the facility, the basis for applying the permit shield, any federal regulatory applicability determinations, and the rationale for the monitoring methods selected.

Therefore, Texas must revise its regulations to require that it prepare and make available a statement setting forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions), and that this statement be sent to EPA and any person who requests it, as required by 40 CFR 70.7(a)(5). This provision will require TNRCC to explain why certain specific requirements, as set forth above, were included in the permit. *See In the Matter of Fort James Camas Mill*, Petition No. X–1999–1 at 8 (''rationale for selected monitoring method must be clear and documented in the permit record'').

*E. Applicable Requirement Definition*

The commenters allege that Texas' definition of ''applicable requirement'' does not include all applicable provisions of the Texas State Implementation Plan (SIP). For example, 30 TAC Chapter 101, Sections 101.1 through 101.30 (Subchapter A), are included in the Texas SIP. Yet the TNRCC only includes Subchapter H of Chapter 101 as an ''applicable requirement.'' Second, the commenters contend that the TNRCC's applicable requirement definition refers to Texas Administrative Code sections which may change without corresponding changes in the Texas SIP. Because title V facilities are obligated to comply with all provisions of the Texas SIP, the commenters assert that the Texas rules should generally state that any current provision of the Texas SIP is an applicable requirement. Comment Letter at 22–23.

The definition of applicable requirement in 40 CFR 70.2 includes, as they apply to emission units in a part 70 source, ''any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act, that implements the relevant requirements of the Act, including any revisions to that plan promulgated in [40 CFR part 52]''. Thus, the phrase ''relevant requirements of the Act'' is not limited to requirements relating to permit content.'' [13]

A review of Chapter 101, Subchapter A reveals that a number of these regulations are applicable requirements of the Act, including, but not limited to, 30 TAC 101.1, 101.6, 101.7, and 101.11.[14] Therefore, TNRCC must revise its definition of ''applicable requirement'' in 30 TAC 122.10(2) to include all the applicable provisions of its SIP in its definition of applicable requirement.

However, contrary to the commenters' assertions, we have concluded there is no requirement that TNRCC adopt a definition to generally state that any current provision of the Texas SIP is an applicable requirement. A State may cite to specific provisions of its administrative code, as Texas has done. Failing to adopt the general definition as set forth in 40 CFR 70.2 may result in TNRCC having to revise its title V program if it adopts an applicable requirement elsewhere in the SIP that does not fit within its definition of applicable requirement in its title V regulations.

*F. Potential to Emit Registration Regulation*

The commenters state that although part 70 allows facilities to avoid title V permitting by limiting their potential to emit (PTE), EPA Guidance requires that the limits be practically enforceable. However, the commenters assert that 30 TAC 122.122(e), which allows a facility to keep all documentation of its PTE limitations on site without providing those documents to the State or to EPA, is not practically enforceable.[15] The public files on the facility would contain no information regarding the limitations that the facility has adopted. Neither the State nor EPA would know about the limitations unless they specifically inquire about them at the facility, and therefore these limits would not be practically enforceable. Thus, the commenters contend that EPA should require that any limitations Texas allows on PTE be recorded in public files and practically enforceable. Comment Letter at 26—27.

(a) For purposes of determining applicability of the Federal Operating Permit Program under this chapter, the owner or operator of stationary sources without any other federally enforceable emission rate may limit their sources' potential to emit by maintaining a certified registration of emissions, which shall be federally enforceable.

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(d) In order to qualify for registrations of emissions under this section, the maximum emission rates listed in the registration must be less than those rates defined for a major source in § 122.10 of this title (relating to General Definitions).

(e) The certified registrations of emissions and records demonstrating compliance with such registration shall

[13] TNRCC has stated that it ''includes in the definition of applicable requirement those chapters and portions of chapters provided in the SIP that are *relevant to permit content*.'' 26 *TexReg* at 3759 (emphasis added).

[14] This is not an exhaustive list. We will work with TNRCC to identify all applicable requirements that must be included in its definition of applicable requirements, including any regulations outside of Chapter 101.

[15] 30 TAC 122.122 reads as follows:

be maintained on-site, or at an accessible designated location, and shall be provided, upon request, during regular business hours to representatives of the Texas Air Control Board or any air pollution control agency having jurisdiction.

According to TNRCC,

[it] agrees that a regulation limiting a site's potential to emit must be practically enforceable, but that certified registrations kept on site meet this requirement. The § 122.10 potential to emit definition specifies that ''any certified registration or preconstruction authorization restricting emissions * * * shall be treated as part of its design if the limitation is enforceable by the EPA.'' The EPA, in 40 CFR 52.21(b)(17), defines federally enforceable as ''all limitations and conditions which are enforceable by the administrator, including those * * * requirements within any applicable SIP.'' Since the commission submitted § 122.122 for incorporation into the SIP, the commission considers limits established under § 122.122 to be federally enforceable. Further, § 122.122 specifies that certain registration of emissions and records demonstrating compliance with the registration must be kept on-site, or at an accessible location, and shall, upon request, be provided to the commission or any air pollution control agency having jurisdiction. The commission does not believe that a certified registration of emissions must be submitted in order to be practically enforceable since the owner or operator must make the registration and any supporting documentation available during an inspection.

26 *TexReg* at 3761.

The TNRCC's approach to PTE limitations does not comply with the requirements of the Act. First, 30 TAC 122.122 is not part of the Texas SIP. The EPA has not approved 30 TAC 122.122, into the SIP. Therefore it is not federally enforceable.[16]

Even if the rule were federally enforceable, the rule must also be practically enforceable.[17] One of the requirements for practical enforceability is notice to the State.[18] Under 30 TAC 122.122, there is no requirement that the State be notified and the registrations are kept on site. Therefore, neither the public, TNRCC, or EPA know what the PTE limit is without going to the site. A facility could change its PTE limit several times without the public or TNRCC knowing about the change. Therefore, these limitations are not practically enforceable, and TNRCC must revise this regulation to make the regulation practically enforceable. The revised regulation must also be approved into the SIP before it, and the registrations, become federally enforceable.

### III. Effect of Notice of Deficiency

Title V of the Act provides for the approval of state programs for the issuance of operating permits that incorporate the applicable requirements of the Act. To receive title V program approval, a state permitting authority must submit a program to EPA that meets certain minimum criteria, and EPA must disapprove a program that fails, or withdraw an approved program that subsequently fails, to meet these criteria. These criteria include requirements that the state permitting authority have authority to ''assure compliance by all sources required to have a permit under this subchapter with each applicable standard, regulation or requirement under this chapter.'' CAA Section 502(b)(5)(A).

40 CFR 70.10(c)(1) provides that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70. This section goes on to list a number of potential bases for program withdrawal, including the case where the permitting authority fails to promulgate or enact new authorities when necessary. 40 CFR 70.10(c)(1)(i)(A).

40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the notice be published in the **Federal Register**. Today's notice satisfies this requirement and constitutes a finding of deficiency. If the permitting authority has not taken ''significant action to assure adequate administration and enforcement of the program'' within 90 days after publication of a notice of deficiency, EPA may take action under 40 CFR 70.10(b)(2). 40 CFR 70.10(b)(3) provides that, if a state has not corrected the deficiency within 18 months of the NOD, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. Upon EPA action, the sanctions will go into effect unless the state has corrected the deficiencies identified in this notice within 18 months after signature of this notice.[19] 40 CFR 70.10(b)(4) provides that, if the state has not corrected the deficiency within 18 months after the date of finding of deficiency, EPA must promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

This document is not a proposal to withdraw Texas' title V program. Consistent with 40 CFR 70.10(b)(2), EPA will wait at least 90 days, at which point it will determine whether Texas has taken significant action to correct the deficiencies.

### IV. Administrative Requirements

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of today's action may be filed in the United States Court of Appeals for the appropriate circuit by March 8, 2002.

Dated: December 20, 2001.

**Gregg A. Cooke,**

*Regional Administrator, Region 6.*

[FR Doc. 02–298 Filed 1–4–02; 8:45 am]

**BILLING CODE 6560–50–P**

[16] Texas' definition of ''federally enforceable'' in 30 TAC 101.1(31) also supports this conclusion. Federally enforceable is defined as ''all limitations and conditions which are enforceable by the EPA administrator, including those requirements developed under 40 CFR parts 60 and 61, requirements within any applicable state implementation plan (SIP), any permit requirements established under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under the approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.''

[17] Seitz and Van Heuvelen, *Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit* (January 22, 1996), and Stein, *Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules and General Permits* (January 25, 1995)

[18] Stein, *Guidance on Enforceability Requirements for Limits Potential to Emit through SIP and § 112 Rules and General Permits* at 6–8.

[19] The EPA is developing an Order of Sanctions rule to determine which sanction applies at the end of this 18 month period.

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7126–4]**

## Sole Source Aquifer Determination for Glen Canyon Aquifer System, Moab, Utah

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

**ACTION:** Notice of final determination.

**SUMMARY:** Pursuant to section 1424(e) of the Safe Drinking Water Act, the Acting Regional Administrator of the U.S. Environmental Protection Agency (EPA) in Region VIII has determined that the Glen Canyon Aquifer System at Moab, Utah and the immediately adjacent recharge area is the sole or principal source of drinking water for the area. The area is located in southeast Utah extending from the City of Moab, southeast, encompassing approximately 76,000 acres in Townships 25 through 28 South and Ranges 21 through 24 East

SLB&M. The area is irregularly shaped with maximum dimensions of about 22 miles from southeast to northwest and approximately 9 miles from southwest to northeast. The entire area is within Grand County, Utah. No viable alternative sources of drinking water with sufficient available supply exist within the area for which this application for sole source designation has been submitted. If this aquifer becomes contaminated, a significant hazard to public health would occur.

The boundaries of the designated area have been reviewed and approved by EPA. As a result of this action, federal financially assisted projects constructed in the approximately 119 square mile area mentioned above will be subject to EPA review to ensure that these projects are designed and constructed in a manner which does not create a significant hazard to public health. For the purposes of this designation the Aquifer Service Area and the Project Review Area are the same as the Designated Area.

**DATES:** This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Mountain Standard Time on January 7, 2002.

**ADDRESSEES:** The data upon which these findings are based, and a map of the designated area are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, CO 80202–2466 or the Moab City Library, 25 South 100 East, Moab Utah 84523.

**FOR FURTHER INFORMATION CONTACT:** William J. Monheiser, Regional Sole Source Aquifer Coordinator, Ground Water Program, 8P-W-GW, USEPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, Phone: 303.312.6271, Fax: 303.312.7084, E-mail: *monheiser.william@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300f, 300h–3(e), Public Law 93–523 as amended, the Acting Regional Administrator of the U.S. Environmental Protection Agency, Region 8 has determined that the Glen Canyon Aquifer System is the sole or principal source of drinking water for the Moab area of southeast Utah described above. Pursuant to section 1424(e), federal financially assisted projects constructed anywhere in the Sole Source Aquifer area described above will be subject to EPA review.

## I. Background

Section 1424(e) of the Safe Drinking Water Act states:

> ''If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal financial assistance may, if authorized under another provision of the law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.''

Effective March 9, 1987, authority to make a Sole Source Aquifer Designation was delegated to the U.S. EPA Regional Administrators.

On May 7, 2001 a petition was received from the City of Moab, 115 West 200 South, Moab Utah 84532, requesting that EPA designate the ground water resources of the Glen Canyon Aquifer System near the City of Moab as a Sole Source Aquifer. In response to this petition, EPA published a notice of a Public Meeting in the Times-Independent, a newspaper of general circulation in the Moab area. This notice announced receipt of the petition and requested public comment in writing or oral comments at the public meeting held August 14, 2001 and for a 34 day comment period following the meeting. Comments received by mail, telephone, Fax and e-Mail were also accepted. The public comment period extended from August 14, 2001 to September 17, 2001.

Subsequently, EPA determined that the petition is both administratively and technically complete and adequate.

## II. Basis for Determination

Among the factors considered by the Regional Administrator for designation of a Sole Source Aquifer under section 1424(e) are: (1) Whether the aquifer is the area's sole or principal source of drinking water, (2) if the designated area has been adequately delineated and, (3) whether contamination of the aquifer would create a significant hazard to public health.

On the basis of information available to EPA, the Regional Administrator has made the following findings of fact, which are the basis for this determination:

1. The Glen Canyon Aquifer System serves as the ''sole source'' of drinking water for approximately 6000 permanent residents within the City of Moab. Most domestic wells and stock wells in the area derive their water from the shallow valley fill aquifer and are not affected by this action. There is no unappropriated alternative drinking water source or combination of sources which could provide fifty percent or more of the drinking water to the designated area, nor is there any projected future alternative source capable of supplying the area's drinking water needs at an economical cost.

2. Although the Glen Canyon Aquifer System underlies much of southeast Utah, in the Moab area the aquifer is of very high quality, able to be used as a drinking water source with the minimal treatment required by the State of Utah. This constitutes a limited resource in this immediate area that if contaminated would create a significant hazard to public health and result in significant economic, social and environmental costs. Potential sources of contamination include: (1) Petroleum, mineral exploration, and geophysical drilling, (2) poorly designed development (3) accidental spills along roadways, (4) abandoned but unplugged petroleum, mineral and geophysical wells, tunnels and (5) non-sustainable agricultural and forestry practices.

3. The City of Moab's petition and supporting documentation have appropriately delineated the boundaries of the subject aquifer.

## III. Description of the Petitioned Aquifer

The designated area of the Glen Canyon Aquifer System encompasses about 76,000 acres in an irregularly shape area approximately 22 miles long by 9 miles wide. Drinking water production is from one developed spring from the Wingate Sandstone and three developed springs and five drilled wells from the Navajo Sandstone. The lower Jurassic Wingate Sandstone, overlain by the lower Jurassic Kayenta Sandstone, overlain by the lower Jurassic Navajo Sandstone comprise the approximately 800 feet thick Glen Canyon Aquifer System. Water production is primarily due to fracture flow. Combined production of the water system can be greater than 4,775 gallons per minute with 3,000,000 gallons of storage. The boundaries of the aquifer were determined by hydrogeologic mapping, which is the area interpreted to contribute water to the springs and well. The aquifer is exposed at the surface within its service area and considered to be moderately to very vulnerable.

**IV. Information Utilized in Determination**

The information utilized in this determination includes the petition from the City of Moab, review of available literature, and the results of ground water investigations conducted by the State on the ground water resources of the area. These data are available to the public and may be inspected during normal business hours at EPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466 or at the Moab City Library, 25 South 100 East, Moab, Utah, 84532.

**V. Project Review**

EPA, Region VIII, will work with the Federal Agencies that may, in the future, provide financial assistance to projects in the designated area. Interagency procedures will be developed in which EPA will be notified of proposed funding commitments for projects which could contaminate the aquifer. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate. Should EPA determine that a project may contaminate the aquifer, so as to create a significant hazard to public health, no commitment for federal assistance may be entered into. However, a commitment for federal assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not contaminate the aquifer.

Although the project review process cannot be delegated to state or local agencies, the EPA will rely upon any existing or future state and local control mechanisms, to the maximum extent possible, in protecting the ground-water quality of the aquifer. Included in the review of any federal financially assisted project will be coordination with local agencies. Their comments will be given full consideration, and the Federal review process will attempt to complement and support state and local ground water quality protection mechanisms.

**VI. Public Comments**

In response to the Public Notice and Public Meeting, a detailed discussion of all questions, a transcript of the public meeting as well as all written comments can be found in the Administrative Record and may be inspected during normal business hours at EPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Participants at the Public Meeting voiced unanimous support for designation. Of the 52 written comments received all were supportive of designation except for one. All comments are addressed in EPA's Responsiveness Summary, which is part of the Administrative record.

No additional data were presented during the public comment period regarding aquifer characteristics, boundary delineation or potential errors of fact presented in the petition.

**VII. Economic and Regulatory Impact**

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that this designation will not have a significant impact on a substantial number of small entities. For purposes of this Certification, ''small entity'' shall have the same meaning as given in section 601 of the RFA. This action is only applicable to projects with the potential to impact the Glen Canyon Aquifer System Sole Source Aquifer as designated.

The only affected entities will be those businesses, organizations or governmental jurisdictions that request federal financial assistance for projects which have the potential for contaminating the Sole Source Aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact of today's action will not be significant. Many projects subject to this review will be preceded by a ground water impact assessment required pursuant to other federal laws, such as the National Environmental Policy Act (NEPA) as amended 42 U.S.C. 4321, *et seq.* Integration of those related review procedures with sole source aquifer review will allow EPA and other federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effects on those small entities which are affected. Finally, today's action does not prevent grants of federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12866, EPA must judge whether a regulation is ''major'' and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, will not cause any major increase in costs or prices, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only affects the Glen Canyon Aquifer System in Grand County, Utah. It provides an additional review of ground water protection measures, incorporating state and local measures whenever possible, for only those projects which request federal financial assistance.

**VIII. Summary**

This determination affects only the Glen Canyon Aquifer System, located in Moab Utah. As a result of this designation all federal financially assisted projects proposed in the delineated area will be subject to EPA review to ensure that they do not create significant hazard to public health,

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

[FR Doc. 02–297 Filed 1–4–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7126–6]**

## Program Requirement Revisions related to the Public Water System Supervision Program for the States of Connecticut, Rhode Island, Vermont and the Commonwealth of Massachusetts

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the States of Connecticut, Rhode Island, Vermont and the Commonwealth of Massachusetts are in the process of revising their approved Public Water System Supervision Programs to meet the requirements of the Safe Drinking Water Act (SDWA).

EPA has determined that the Revised Public Water System Definitions for the State of Connecticut and the Commonwealth of Massachusetts are no less stringent than the corresponding revised Federal definition, as authorized under the Safe Drinking Water Act Amendments of 1996 and final rule provided on April 28, 1998 (63 FR 23362). Therefore, EPA intends to approve this Public Water System Supervision Program requirement for both Connecticut and Massachusetts.

The State of Connecticut has adopted drinking water regulations for Synthetic

Organic Chemicals and Inorganic Chemicals (also known as Phase II, Phase IIB, and Phase V Drinking Water Regulations) that correspond to the National Primary Drinking Water Regulations promulgated by EPA on January 30, 1991 (56 FR 3526), July 1, 1991 (56 FR 30266) and July 17, 1992 (57 FR 31776) respectively. After additional review of the submitted documentation, EPA has determined that the State program revisions for its Phase II, Phase IIB and Phase V Drinking Water Regulations are no less stringent than the corresponding Federal regulations. Therefore, EPA intends to approve these Public Water System Supervision Program requirements for Connecticut.

In addition, the State of Connecticut has adopted drinking water regulations for controlling lead and copper in drinking water that correspond to the National Primary Drinking Water Regulations promulgated on June 7, 1991 (56 FR 26460). After additional review of the submitted documentation, EPA has determined that Connecticut's Lead and Copper Rule program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA intends to approve these Public Water System Supervision Program requirements for Connecticut.

The State of Rhode Island has adopted drinking water regulations for the Phase II and Phase IIB (Synthetic Organic Chemicals and Inorganic Chemicals) Rules that correspond to the National Primary Drinking Water Regulations promulgated by EPA on January 30, 1991 (56 FR 3526) and July 1, 1991 (56 FR 30266) respectively. After review of the submitted documentation, EPA has determined that Rhode Island's Phase II and Phase IIB Rules are no less stringent than the corresponding Federal regulations. Therefore, EPA intends to approve these Public Water System Supervision Program requirements for Rhode Island.

The States of Rhode Island and Vermont have revised their Public Water System Supervision (PWSS) primacy programs by adopting regulations for their respective Consumer Confidence Report Rule that correspond to 40 CFR part 141, subpart O. After review of the submitted documentation, EPA has determined that Rhode Island's and Vermont's Consumer Confidence Report Rules are no less stringent than the corresponding Federal regulation. Therefore, EPA intends to approve these Public Water System Supervision Program requirements for Rhode Island and Vermont.

**DATES:** All interested parties may request a public hearing for any of the above EPA determinations. A request for a public hearing must be submitted within thirty (30) days of this **Federal Register** publication date to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by this date, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become final and effective thirty (30) days after the publication of this **Federal Register** notice. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination; (3) information that the requesting person intends to submit at such hearing; and (4) the signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

**ADDRESSES:** All documents relating to this determination are available for inspection between the hours of 8:30AM and 4:00PM, Monday through Friday, at the following office(s): U.S. Environmental Protection Agency, Office of Ecosystem Protection, One Congress Street, 11th floor, Boston, MA 02114.

For documents specific to that State/Commonwealth:

Massachusetts Department of Environmental Protection, Drinking Water Program, One Winter Street, Boston, MA 02108.

CT Department of Public Health, Water Supplies Section, 450 Capitol Avenue, P.O. Box 340308—51 WAT, Hartford, CT 06134–0308.

Rhode Island Department of Health, Office of Drinking Water Quality, 3 Capitol Hill, Cannon Building, Room 209, Providence, RI 02908–5097.

Vermont Department of Environmental Conservation, Water Supply Division, 103 South Main Street, Waterbury, VT 05676.

**FOR FURTHER INFORMATION CONTACT:** Barbara McGonagle, Office of Ecosystem Protection (telephone 617–918–1608).

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 1401 and Section 1413 (U.S.C. 300g–2) of the Safe Drinking Water Act, as amended (1996), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: December 19, 2001.

**Robert W. Varney,**

*Regional Administrator, EPA-New England.*

[FR Doc. 02–296 Filed 1–4–02; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

*Title:* Community Rating System (CRS) Program—Application Worksheets and Commentary.

*Type of Information Collection:* Revision of a currently approved collection.

*OMB Number:* 3067–0195.

*Abstract:* The CRS Program establishes a system for FEMA to grade communities' floodplain management activities that exceed Federal minimum standards and to qualify for lower insurance rates. The January 2002 edition of the NFIP CRS Coordinator's Manual contains instructions for preparing the application worksheets that will be used to apply for activity points leading up to a CRS rating and commensurate flood insurance premium discounts. The schedule describes the floodplain management and insurance activities available to qualifying communities that undertake the selected additional activities that will reduce flood losses. Annually, all CRS participating communities must certify they are maintaining activities for which they receive credit.

*Affected Public:* State, Local or Tribal Government.

*Number of Respondents:* 940.

*Estimated Time per Respondent:* 29 hours.

*Estimated Total Annual Burden Hours:* 9,260.

*Frequency of Response:* Annual upate.

*Comments:* Interested persons are invited to submit written comments on the proposed information collection to

the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or e-mail *muriel.anderson@fema.gov.*

Dated: December 21, 2001.

**Muriel B. Anderson,**

*Acting Branch Chief, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate.*

[FR Doc. 02–324 Filed 1–4–02; 8:45 am]

**BILLING CODE 6718–01–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1398–DR]**

### Mississippi; Amendment No. 1 to Notice of a Major Disaster Declaration

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

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Mississippi (FEMA–1398–DR), dated December 7, 2001, and related determinations.

**EFFECTIVE DATE:** December 17, 2001.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective December 17, 2001.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 02–322 Filed 1–4–02; 8:45 am]

**BILLING CODE 6718–02–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1398–DR]**

### Mississippi; Amendment No. 2 to Notice of a Major Disaster Declaration

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

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Mississippi, (FEMA–1398–DR), dated December 7, 2001, and related determinations.

**EFFECTIVE DATE:** December 20, 2001.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Readiness, Response Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Mississippi is hereby amended to include Public Assistance and the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 7, 2001:

Benton, Coahoma, Marshall, Prentiss, Tallahatchie, and Tippah Counties for Public Assistance.

Bolivar, Humphreys, Panola, Quitman, Sunflower, and Washington Counties for Public Assistance (already designated for Individual Assistance).

Grenada, Lafayette, and Scott Counties for Individual Assistance.

Leake and Tunica Counties for Individual and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 02–323 Filed 1–4–02; 8:45 am]

**BILLING CODE 6718–02–P**

## OFFICE OF GOVERNMENT ETHICS

### Submission for OMB Review; Comment Request: Revised Public Financial Disclosure Access Customer Service Survey

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Notice.

**SUMMARY:** The Office of Government Ethics has submitted the proposed revised information collection form, the updated OGE Public Financial Disclosure Access Customer Service Survey as in this notice, to the Office of Management and Budget (OMB) for review and three-year extension of approval under the Paperwork Reduction Act.

**DATES:** Comments by the public and agencies on this information collection as proposed for revision should be received by February 6, 2002.

**ADDRESSES:** Comments should be sent to Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; Telephone: 202–395–7316.

**FOR FURTHER INFORMATION CONTACT:** Mary T. Donovan at the U.S. Office of Government Ethics; Telephone: 202–208–8000, ext. 1185; TDD 202–208–8025; FAX 202–208–8038. A copy of the survey may be obtained, without charge, by contacting Ms. Donovan.

**SUPPLEMENTARY INFORMATION:** The Office of Government Ethics uses the Public Financial Disclosure Access Customer Service Survey (OGE) form to assess requester satisfaction with the service provided by OGE in responding to requests by members of the public for access to copies of Standard Form (SF) 278 Executive Branch Personnel Public Financial Disclosure Reports on file with OGE. Most of the SF 278 reports available at OGE are those filed by executive branch Presidential appointees subject to Senate confirmation. Requests for access to SF 278 reports are made pursuant to the special public access provision of section 105 of the Ethics in Government Act of 1978 (the Ethics Act), as codified at 5 U.S.C. appendix 105, and procedures in 5 CFR 2634.603 of OGE's executive branchwide regulations thereunder, by completing an OGE Form 201, ''Request to Inspect or Receive Copies of SF 278 Executive Branch Personnel Public Financial Disclosure Report or Other Covered Record.''

The Office of Government Ethics distributes the survey form to requesters

along with copies of requested SF 278 reports. Those who choose to respond can complete and return the survey to OGE via the self-contained postage-paid postcards (the reverse side of the survey form, when folded, becomes a pre-addressed postcard). The purpose of this anonymous survey is to determine through customer responses how well OGE is responding to such requests and how OGE can improve its customer service in this important area. The current paperwork approval for the survey form is scheduled to expire at the end of January 2002.

On June 18, 2001, OGE issued its first round **Federal Register** notice to announce its forthcoming request to OMB for paperwork renewal of the customer service survey form. See 66 FR 32823–32824 with comments due by September 4, 2001. (OGE did not receive any comments or requests for copies of the customer service survey form). In that notice, and this one, OGE has proposed minor changes to survey question 4 to achieve greater clarity. That question currently asks whether OGE's requirement to fax or mail requests that involve more than six filers creates a problem for the requester. Based on an analysis of customer responses to question 4, OGE believes that the following statement should be added: ''SKIP this question if your request involved six or fewer filers.'' Additionally, one of the three requested responses to question 4, ''Not Applicable,'' is being changed to ''My request did not have to be faxed or mailed.''

Pursuant to the Paperwork Reduction Act, OGE has not included in its public burden estimate for the survey form the limited number of access requests filed by other Federal agencies or Federal employees. Nor has OGE included in that estimate the limited number of requests for copies of other records covered under the special Ethics Act public access provision (such as certificates of divestiture) since the survey is only sent to persons who request copies of SF 278 reports. As so defined, the total number of access survey forms for copies of SF 278s estimated to be filed annually at OGE over the next three years by members of the public (primarily by news media representatives, public interest group members and private citizens) is 50. This estimate is based on a calculation of the number of survey forms received at OGE between April 1999 and June 2001 (70 surveys). This number also takes into account the increase in the number of public requests experienced as a result of the transition and the new Presidential administration. The estimated average amount of time to read the instructions on the proposed revised customer service survey form, and to complete the form remains at three minutes. Thus, the overall estimated annual public burden for the OGE Public Financial Disclosure Access Customer Service Survey as proposed for revision will be three hours (rounded up from two and a half hours(= 50 forms × 3 minutes per form)).

In this second round notice, public comment is again invited on all aspects of OGE's customer service survey form as proposed for renewal with minor revision, including specifically views on: the accuracy of OGE's public burden estimate; the potential for enhancement of quality, utility, and clarity of the information to be collected; and the minimization of burden (including the possibility of use of information technology). The Office of Government Ethics, in consultation with OMB, will consider all comments received, which will become a matter of public record.

Approved: December 31, 2001.

**Amy L. Comstock,**

*Director, Office of Government Ethics.*

[FR Doc. 02–327 Filed 1–4–02; 8:45 am]

**BILLING CODE 6345–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at the following Web sites: *http://workplace.samhsa.gov; http://www.drugfreeworkplace.gov;* and *http://www.health.org/workplace.*

**FOR FURTHER INFORMATION CONTACT:** Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

**SUPPLEMENTARY INFORMATION:**

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc. 160 Elmgrove Park, Rochester, NY 14624, 716–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Laboratory Partners, LLC, 129 East Cedar St., Newington, CT 06111, 860–696–8115 (Formerly: Hartford Hospital Toxicology Laboratory)
Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917
Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (Formerly: Cox Medical Centers)
Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416
Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468
DrugProof, Divison of Dynacare, 543 South Hull St., Montgomery, AL 36103, 888–777–9497/334–241–0522 (Formerly: Alabama Reference Laboratories, Inc.)
DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310
Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609
Express Analytical Labs, 3405 7th Avenue, Suite 106, Marion, IA 52302, 319–377–0500
Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267
Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053 504–361–8989/800–433–3823 (Formerly: Laboratory Specialists, Inc.)
LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064 (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800–882–7272 (Formerly: Poisonlab, Inc.)
Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734
MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.)
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515
Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)
One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110/800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory
Pathology Associates Medical Laboratories, 110 West Cliff Drive, Spokane, WA 99204, 509–755–8991/800–541–7891x8991
PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–842–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728 (Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520 (Formerly: SmithKline Beecham Clinical Laboratories)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
Universal Toxicology Laboratories (Florida), LLC, 5361 NW 33rd Avenue, Fort Lauderdale, FL 33309, 954–717–0300, 800–419–7187x419 (Formerly: Integrated Regional Laboratories, Cedars Medical Center, Department of Pathology)
Universal Toxicology Laboratories, LLC, 9930 W. Highway 80, Midland, TX 79706, 915–561–8851/888–953–8851
US Army Forensic Toxicology Drug Testing Laboratory, Fort Meade, Building 2490, Wilson Street, Fort George G. Meade, MD 20755–5235, 301–677–7085

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 FR, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

**Richard Kopanda,**

*Executive Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 02–277 Filed 1–4–02; 8:45 am]

**BILLING CODE 4160–20–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Establishment of the Battle of Midway National Memorial Planning Committee

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

**ACTION:** Notice of establishment.

**SUMMARY:** We are publishing this notice in accordance with section 9a of the Federal Advisory Committee Act (Public Law 92–463). Following consultation with the General Services Administration, the Secretary of the Interior hereby establishes the Battle of Midway National Memorial Advisory Committee. The Committee will develop a strategy for a public dedication of the memorial, identify and plan for appropriate exhibits to commemorate this important event, and offer recommendations on improving visitor services on Midway Atoll National Wildlife Refuge.

**DATES:** On January 22, 2002, we will file a copy of the charter with the Committee on Environment and Public Works, United States Senate; Committee on Resources, House of Representatives; General Services Administration; and Library of Congress.

**ADDRESSES:** You may submit comments to Barbara Maxfield, Fish and Wildlife Service, P.O. Box 50617, Honolulu, Hawaii, 96850–5167, phone number (808) 541–1201.

**FOR FURTHER INFORMATION CONTACT:** Barbara Maxfield, U.S. Fish and Wildlife Service, (808) 541–1201.

**SUPPLEMENTARY INFORMATION:** The Committee will provide advice to the Secretary of the Interior through the Director, Fish and Wildlife Service on the management of the Battle of Midway National Memorial. The FY 2000 Interior Appropriations bill directed us to designate the Battle of Midway National Memorial on the Midway Atoll National Wildlife Refuge to commemorate the pivotal World War II Battle of Midway. The appropriations language also directed that we consult on a regular basis with other agencies and organizations on the management of the national memorial.

The Committee will be comprised of representatives from the Fish and Wildlife Service, National Park Service, Naval Historical Center, International Midway Memorial Foundation, Inc., Midway-Phoenix Corporation, Sixth Defense Battalion, the National Wildlife Refuge Association, Friends of Midway Atoll National Wildlife Refuge, National Trust for Historic Preservation, and a member of the Battle of Midway veterans' community. These agencies, organizations, and the veteran have demonstrated an interest and expertise in commemorating and preserving historical features associated with the Battle of Midway and reflect a balanced, cross-sectional representation of public and private sector organizations.

The Committee will function solely as an advisory body and in compliance with provisions of the Federal Advisory Committee Act.

The Certification for establishment of the committee is published below.

**Certification**

I hereby certify that the Battle of Midway National Memorial Planning Committee is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Consolidated Appropriations Act for FY 2000, the National Historic Preservation Act of 1966, as amended, and the National Wildlife Refuge System Improvement Act of 1997. The Committee will assist the Fish and Wildlife Service by providing advice and developing recommendations for the long-term management and interpretation of the Battle of Midway National Memorial.

Dated: October 11, 2001.

**Gale A. Norton,**

*Secretary of the Interior.*

[FR Doc. 02–293 Filed 1–4–02; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Information Collections for Approval Under the Paperwork Reduction Act for Neotropical Migratory Bird Conservation Act Program

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of information collection; request for comments.

**SUMMARY:** The collection of information described below has been submitted to the Office of Management and Budget (OMB) for emergency approval under the provisions of the Paperwork Reduction Act of 1995, and received OMB approval number 1018–0113 with an expiration date of 6/30/2002. Copies of the specific information collection requirements, related forms and explanatory material may be obtained by contacting the Service Information Collection Clearance Officer at the address provided below.

**DATES:** Consideration will be given to all comments received on or before March 8, 2002. OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by the above referenced date.

**ADDRESSES:** Comments and suggestions on the requirement should be sent to Rebecca Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 860—ARLSQ, 1849 C Street, NW, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at 703/358–2287, or electronically to *rmullin@fws.gov.*

**SUPPLEMENTARY INFORMATION:**

The OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). On December 19, 2001, the U.S. Fish and Wildlife Service (Service) provided information to OMB for collection of information in order to begin a grants program conducted under the Neotropical Migratory Bird Conservation Act (Public Law 106–247). The assigned OMB information collection control number is 1018–[to be assigned] , and temporary approval expires on [unknown]. The Service is requesting a three year term of approval for this information collection activity. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments are 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 estimate of the 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 the collection of information on respondents.

*Title:* Information Collection In Support of Grant Programs Authorized by the Neotropical Migratory Bird Conservation Act of 2000.

*Approval Number:* 1018–0113.

*Service Form Number(s):* N/A.

*Description and Use:* Congress passed Neotropical Migratory Bird Conservation Act (Act) in 2000, having the following purposes:

(1) To perpetuate healthy populations of neotropical migratory birds;

(2) to assist in the conservation of neotropical migratory birds by supporting conservation initiatives in the United States, Latin America, and the Caribbean; and

(3) to provide financial resources and to foster international cooperation for those initiatives.

The Act establishes ''* * * a program to provide financial assistance for projects to promote the conservation of neotropical birds.'' (Sec. 5(a)). Section 5(c) ''Project Proposals'' describes the information to be included in a project proposal.

Proposals for funding will be submitted in response to the call for proposals posted on the Division of Bird Habitat Conservation website. These proposals will be reviewed for completeness and eligibility by staff of the Division, and then distributed to the Advisory Group referenced in Sec. 7(b) of the Act. The Advisory Group will then make a recommendation to the Secretary of the Interior regarding which of these proposals should be funded. The Secretary or her designee will make the final decision. All proposals will be kept on file at the Division. Information collected under this program will be used to respond to such needs as: GPRA reporting, SF 424s, grant agreements, budget reports and justification, public and private requests for information, data provided to other programs for databases on similar programs, Congressional inquiries and reports required by the Act. This is a new collection.

In summary, information collection under these programs is required to obtain a benefit, *i.e.,* a cash reimbursable grant that is given competitively to some applicants based on eligibility and relative scale of resource values involved in the projects. The information collection is subject to the Paperwork Reduction Act requirements for such activity, which includes soliciting comments from the general public regarding the nature and burden imposed by the collection.

*Frequency of Collection:* Once per year.

*Description of Respondents:* Individuals, businesses, not-for-profit institutions, Federal Government; and State, local and/or Tribal governments.

*Estimated Completion Time:* The reporting burden, or time involved in writing a project proposal, is estimated to be 40 hours.

*Number of Respondents:* It is estimated that 30 proposals will be submitted each year.

Dated: January 2, 2002.

**Rebecca A. Mullin,**

*Information Collection Officer, U.S. Fish and Wildlife Service.*

[FR Doc. 02–294 Filed 1–4–02; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act (PRA)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Information collection change approval—Boating Infrastructure Grant Program Survey.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) submitted the collection of information requirement described below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (PRA). A copy of this information collection is included in this notice. You may obtain additional copies of the collection requirement, related survey and explanatory material by contacting the Service's Information Collection Clearance Officer at the phone number listed below.

**DATES:** Consideration will be given to all comments received on or before February 6, 2002. OMB has up to 60 days to approve or disapprove information collections but may respond after 30 days.

**ADDRESSES:** Interested parties should send comments and suggestions on the requirement to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Interior Desk Officer (1018–0106), New Executive Office Building, 725 17th Street, NW., Washington, DC 20503 and they should send a copy of the comments to: Rebecca A. Mullin, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203, (703) 358–2278 or *Rebecca_Mullin@fws.gov* E-mail.

**FOR FURTHER INFORMATION CONTACT:** Michael Vandeford, (703) 358–2033, fax (703) 358–1837, or *Michael_Vanderford@fws.gov* E-mail.

**SUPPLEMENTARY INFORMATION:** *General:* Comments regarding this survey were received as a result of the survey being published in the **Federal Register**, Volume 65, Number 206, pages 63606–63617, October 24, 2000. We received 54 comments from 3 respondents. Most comments pertained to minor textual changes to improve clarity, while others addressed specific questions, use of survey data, and implementation of the survey. Comments regarding textual changes were used in revising the survey to the extent possible.

*Written Comments:*

*Issue 1:* One response suggested that Part A, question 12 and Part B, question 9 fail to address interstate boating facility needs.

*Response:* The survey instrument is designed to allow States to assess their boating access needs. The U.S. Fish and Wildlife Service will use the results of the State surveys to create a comprehensive national boating access needs assessment to address interstate access needs.

*Issue 2:* We received one comment suggesting that Part A, question 18 requesting subjective comments pertaining to recreational boating was too broad and should be limited to transient boating facilities. Similar comments were made regarding Part B, question 13; Part C, question 12; and Part D, question 23.

*Response:* Reducing subjective comments to only those concerning transient facilities is too limiting. However, we do agree that subjective comments must remain focused on facility issues. In response to this comment, we added the word ''facilities'' after ''recreational boating'' in the questions.

*Issue 3:* Two comments identified faulty numbering of questions in the survey instrument.

*Response:* We revised the numbering of the questions in all Parts of the survey.

*Issue 4:* One respondent suggested an answer for Part B, question 10 be revised to include portable toilet dump

stations instead of waste pumpouts due to the frequent use of portable toilets by operators of boats under 26 feet in length.

*Response:* We agree in part with this comment and revised the available answer in Part A, question 13 and Part B, question 10 to read as follows, ''pumpout/portable toilet dump stations.'' Similar changes were also made to Part C and Part D.

*Issue 5:* A comment regarding Part B, question 11 suggested the answers be revised to include launch lanes and parking areas as these are facilities desired by operators of trailerable boats. A similar comment was made regarding Part C, question 16.

*Response:* Part B, question 10 specifically addresses the satisfaction levels of boaters regarding launch ramps and parking areas. Part C, question 16 specifically addresses parking areas, restrooms, and launch areas. No changes were made in response to these comments.

*Issue 6:* Two comments suggested the respondent identifying question in Part C be revised to clearly distinguish between public and private facilities.

*Response:* We agree and revised the answer set to clearly identify public and private providers.

*Issue 7:* A comment suggested revising Part C, question 4 to focus on transient slips.

*Response:* We disagree as the survey was designed to assess the needs for all recreational boating facilities. We did not change Part C, question 4 in response to this comment.

*Issue 8:* One respondent was unclear about which questions in Part A refer to boats greater than or equal to 26 feet in length. The same comment was made regarding Parts B, C, and D.

*Response:* We agree and revised instructions in each Part for clarification.

*Issue 9:* A respondent suggested adding logistical instructions to Part A questions 1–3, Part B questions 1–3, and Part C question 1 informing respondents how to return completed surveys to the appropriate location.

*Response:* Each State agency administering the survey is responsible for providing logistical instructions to ensure the proper return of completed surveys. However, in response to this comment, we added instructions directing the respondents to return completed surveys.

*Issue 10:* One respondent suggested altering the available answers in Part A, question 5 and Part B, question 5 to clarify where the vessels are kept during the boating season.

*Response:* We agree and changed the answer sets in each question to clearly identify that the general location is the desired response.

*Issue 11:* One comment suggested that the words ''transient tie-up facilities'' in Part A, question 11 are jargon and require definition.

*Response:* The meaning of ''transient tie-up facilities'' is defined in the Boating Infrastructure Grant Program final rule which appeared in the **Federal Register** on January 18, 2001, Volume 66, Number 12, pages 5282–5294. No change was made in response to this comment.

*Issue 12:* One comment suggested Part C and Part D would be easier to complete if respondents were able to focus on answering questions pertaining to each facility managed, as opposed to answering questions for all facilities before continuing to the next question.

*Response:* During the revision of this survey, developers discussed this option. In order to keep the survey as short as possible, the current format was selected with the understanding that States administering the survey have substantial flexibility regarding presentation of the survey to potential respondents. No change was made in response to this comment.

*Title:* Boating Infrastructure Grant Program Survey.

*OMB Control Number:* 1018–0106 expires 3/31/2003. 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.

*Service Form Number:* 3–2187.

*Frequency of Collection:* One-time.

*Description and Use:* The Service administers the Boating Infrastructure Grant Program authorized by the Federal Aid in Sport Fish Restoration Act. Under the Act, as amended, the Service is responsible for development of a survey to assess the needs for facilities for recreational boaters. This survey was previously approved under the referenced OMB control number. This request is for approval of changes to the previously approved survey instrument. These changes include dropping certain questions, rewording others for clarity, and reformatting the questionnaire, making it easier to understand and use. These changes reduced the hourly burden on respondents by 20,277 hours. Changes are discussed in detail in this notice under Supplementary Information.

*Additional Information:* The Service submitted the following information collection requirement to OMB for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are 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.

*Description of Respondents:* Boaters and/or boating access providers in the States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa.

*Completion Time and Response Estimate:*

| Type of information | Number of interviews* | Average time required per response (minutes) | Annual burden hours |
|---|---|---|---|
| Boat owners: Part A | 11,200 | 12 | 2,240 |
| Boat owners: Part B | 28,000 | 12 | 5,600 |
| Boating access providers: Part C | 8,400 | 20 | 2,800 |
| Boating access providers: Part D | 4,000 | 20 | 1,333 |
| Total | ..... | ..... | 11,973 |

*These numbers are not additive since some of the boaters will fill out both Parts A and B, and most of the providers will fill out both Parts C and D.

The gathering of information from applicants to assess recreational boating facility needs is authorized under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777k). Information from this survey will be used to assess the needs for recreational boating facilities. Your participation in completing this form is not required to obtain benefits under the Boating Infrastructure Grant Program. Once submitted, this survey becomes public information and is not protected under the Privacy Act. The public reporting burden for this survey is estimated at 10 to 25 minutes per response, including time for gathering information and completing. Direct comments to the Service Information Collection Clearance Officer, (1018–0106), U.S. Fish and Wildlife Service, MS 222–ARLSQ; 1849 C Street N.W., Washington, D.C. 20240.

An agency may not conduct and a person is not required to complete a collection of information unless a currently valid OMB control number is displayed.

Dated: January 2, 2002.

**Rebecca Mullin,**

*Information Collection Clearance Officer.*

**BOATING INFRASTRUCTURE GRANT PROGRAM NATIONAL FRAMEWORK**

**PART A: RECREATIONAL BOATING NEEDS ASSESSMENT QUESTIONNAIRE FOR BOATERS WITH BOATS 26 FEET OR MORE IN LENGTH**

Please answer the following questions about your boating activities in [*name of State*]. [Add comment about confidentiality if applicable under state law]

1. Do you own a boat 26 feet or more in length?

☐ Yes. ☐ No. You need not complete this questionnaire. [If this is a mail survey, please stop and return the survey]

2. Have you boated in [*name of State*] within the past 2 years?

☐ Yes. ☐ No. You need not complete this questionnaire. [If this is a mail survey, please stop and return the survey]

3. Do you boat mainly for recreation (NOT for work)?

☐ Yes. ☐ No. You need not complete this questionnaire. [If this is a mail survey, please stop and return the survey]

4. What type of boat or boats do you own? (Please check all that apply)

☐ Cabin cruiser (gasoline) ☐ Cabin cruiser (diesel) ☐ Sailboat
Houseboat/pontoon boat ☐ Open motor boat ☐ Trawler
☐ Other (please specify)____

FOR QUESTIONS 5–9 PLEASE REFER TO THE BOAT OVER 26 FEET IN LENGTH THAT YOU USE THE MOST

5. Where do you usually keep this boat during the boating season? (Please check the one that MOST applies. If you keep your boat in a location other than your home please name the specific site)

| | |
|---|---|
| ☐ At waterfront property, which is your permanent residence ..... | State_____ |
| ☐ At waterfront property, which is your seasonal residence ..... | State_____ |
| ☐ On the water at a public or private marina ..... | State/City/town:_____<br>Site name:_____ |
| ☐ At a 'dry-stack' marina or other storage facility ..... | State/City/town:_____<br>Site name:_____ |
| ☐ Other (specify)_____ ..... | State/City/town:_____<br>Site name:_____ |

6. How many days a year do you use this boat to go boating in [name of state]? (Please check the one that MOST applies.)

☐ 1 to 10 days a year
☐ 11 to 20 days a year
☐ 21 to 50 days a year
☐ More than 50 days a year

7. How long is typical boating trip for you in [name of state]? (Please check the one that MOST applies.)

☐ Day trip or weekend
☐ Extended trip longer than one weekend

8. Where do you go in this boat? (Please check the one that MOST applies.)

☐ One the water body in which it is kept
☐ Connected waters up to 25 miles from 'home port'
☐ Connected waters 26 to 50 miles from 'home port'
☐ To destinations over 50 miles

9. What is the average distance that you travel in your boat on a day of boating in [name of state]?

☐_____miles.

10. Do you think there are enough transient tie-up facilities in [*name of State*]? (Please rate on a scale of 1 to 5.)

| No, need a lot more | No, need a few more | The right amount | Yes, more than enough | Yes, there are too many |
|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 |

11. Please identify 3 areas in [*name of State*] where you see the greatest need for more transient tie-up facilities. (Please be as specific as possible and name the country and city or town, and the area name or location.)

| Site name | County and city or town | Area name and/or location (such as lake, slough, bay, harbor, section of river or other) |
|---|---|---|
| Area #1<br>Area #2<br>Area #3 | | |

12. Thinking about the boating area(s) you just mentioned in Question #11, what kinds of features do you think are needed at each? (Please check all that apply.)

| | Area #1 | Area #2 | Area #3 |
|---|---|---|---|
| Transient slips or tie-up facilities | ☐ | ☐ | ☐ |
| Transient moorings | ☐ | ☐ | ☐ |
| Fuel (gasoline) | ☐ | ☐ | ☐ |
| Fuel (diesel) | ☐ | ☐ | ☐ |
| Utilities (electric, water, phone) | ☐ | ☐ | ☐ |
| Restrooms | ☐ | ☐ | ☐ |
| Sewage pumpout/portable toilet dump stations | ☐ | ☐ | ☐ |
| Other (specify) | | | |
| Other (specify) | | | |
| Other (specify) | | | |

13. Why don't you boat more often in [*name of State*]? Please rate how the following factors may impact your decision NOT to boat in [*name of State*] more frequently. (Please check one for each factor listed.)

| | No impact | Low impact | Medium impact | High impact | Does not apply |
|---|---|---|---|---|---|
| Too few transient slips, moorings, or tie-up facilities | ☐ | ☐ | ☐ | ☐ | ☐ |
| Inaccessibility due to shallow water/channel depths | ☐ | ☐ | ☐ | ☐ | ☐ |
| Lack of information about transient tie-up facility locations | ☐ | ☐ | ☐ | ☐ | ☐ |
| Inadequate facilities (fuel, utilities, restrooms) | ☐ | ☐ | ☐ | ☐ | ☐ |
| Congested waterways (boats traffic) | ☐ | ☐ | ☐ | ☐ | ☐ |
| Poor water quality for fishing | ☐ | ☐ | ☐ | ☐ | ☐ |
| Poor water quality for swimming | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ |

14. How do you reach the shoreline from your boat? (Please check ALL that apply.)

☐ Via shore slip or other transient tie-up facility
☐ Via a dinghy from a moored or anchored position
☐ Pulling onto shore or close to shore
☐ Other _____

15. If you checked MORE THAN ONE option in Question #14 above, which do you prefer? (Please check the one that you MOST prefer.)

☐ Via shore-side slip or other transient tie-up facility
☐ Via a dinghy from a moored or anchored position
☐ Pulling onto shore or close to shore
☐ Other _____

16. What is the minimum water depth in feet required for safe operation of the boat you use the most?

☐ _____ feet.

17. Please use the space below to make any other comments or suggestions about recreational boating facilities in your State.

_____

_____

_____

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and the Privacy Act of 1974 (U.S.C. 552), please be advised that:

The gathering of information from applicants to assess recreational boating facility needs is authorized under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777k). Information from this survey will be used to assess the needs for recreational boating facilities. Your participation in completing this form is not required to obtain benefits under the Boating Infrastructure Grant Program. Once submitted, this survey becomes public information and is not protected under the Privacy Act. The public reporting burden for this survey is estimated at 10 to 25 minutes per response, including time for gathering information and completing. Direct comments to the Service Information Collection Clearance Officer, (1018–0106), U.S. Fish and Wildlife Service, MS 222–ARLSQ; 1849 C Street NW., Washington, DC 20240.

An agency may not conduct and a person is not required to complete a collection of information unless a currently valid OMB control number is displayed.

**PART B: BOATING NEEDS ASSESSMENT QUESTIONNAIRE FOR BOATERS WITH BOATS UNDER 26 FEET IN LENGTH**

Please answer the following questions about your boating activities in [*name of State*]. [Add comment about confidentiality if applicable under state law]

1. Do you own a boat under 26 feet in length?

☐ Yes. ☐ No. You need not complete this questionnaire. [If this is mail survey, please stop and return the survey]

2. Have you boated in [*name of State*] within the past 2 years?

☐ Yes. ☐ No. You need not complete this questionnaire. [If this is a mail survey, please stop and return the survey]

3. Do you boat mainly for recreation (NOT for work)?

☐ Yes. ☐ No. You need not complete this questionnaire. [If this is a mail survey, please stop and return the survey]

4. What type of boat or boats do you own? (Please check all that apply.)

☐ Cabin cruiser (gasoline)
☐ Cabin cruiser (diesel)
☐ Houseboat/pontoon boat
☐ Sailboat
☐ Bass boat/jon boat
☐ Open motor boat
☐ Personal water craft
☐ Jet drive boat
☐ Unpowered rowboat
☐ Canoe/kayak
☐ Sailboard
☐ Inflatable boat/raft
☐ Other (please specify) _____

FOR QUESTIONS 5–7 PLEASE REFER TO THE BOAT UNDER 26 FEET IN LENGTH THAT YOU USE THE MOST

5. Where do you usually keep this boat during the boating season? (Please check the one that MOST applies. If you keep your boat in a location other than your home, please name the specific site.)

☐ Public or private marina
☐ At home on a trailer
☐ In a rented dry storage area (that is not a marina)
☐ Waterfront property that you own, rent, or lease
☐ Other _____

6. How do you put your boat in the water in [name of State]?

☐ I use a trailer ☐ I carry it down to the water

7. How many miles (one way) do you typically transport the boat over land to go boating in [name of State]?

☐ _____

8. Please identify 3 [*name of State*] areas where you see the greatest need for more boat access sites. (Please be as specific as possible and name the county and city or town, and the area name or location).

| Area | County and city or town | Area name and/or location (such as lake, slough, bay, harbor, section of river or other) |
|---|---|---|
| Area #1<br>Area #2<br>Area #3 | | |

9. Thinking about the boating area(s) you just mentioned in Question #8, what kinds of support features do you think are needed at each? (Please check all that apply.)

| | Area #1 | Area #2 | Area #3 |
|---|---|---|---|
| Carry-down walkway to the water's edge | ☐ | ☐ | ☐ |
| Boarding floats | ☐ | ☐ | ☐ |
| Launch ramp | ☐ | ☐ | ☐ |
| Parking | ☐ | ☐ | ☐ |
| Sewage pumpout/portable toilet dump stations | ☐ | ☐ | ☐ |
| Restrooms/showers | ☐ | ☐ | ☐ |
| Other (specify) | | | |
| Other (specify) | | | |
| Other (specify) | | | |

10. Please rate how the following factors may impact your decision NOT to boat in [name of State] more frequently. (Please check one for each factor listed.)

| | No impact | Low impact | Medium impact | High impact | Does not apply |
|---|---|---|---|---|---|
| Too few boat access sites | ☐ | ☐ | ☐ | ☐ | ☐ |

| | No impact | Low impact | Medium impact | High impact | Does not apply |
|---|---|---|---|---|---|
| Lack of information about access site locations | ☐ | ☐ | ☐ | ☐ | ☐ |
| Inadequate facilities (fuel, utilities, restrooms) | ☐ | ☐ | ☐ | ☐ | ☐ |
| Congested waterways (boat traffic) | ☐ | ☐ | ☐ | ☐ | ☐ |
| Poor water quality for fishing | ☐ | ☐ | ☐ | ☐ | ☐ |
| Poor water quality for swimming | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ |

11. Do you think there are enough boat access sites in [*state name*]? (Please rate on a scale of 1 to 5.)

| No, need a lot more | No, need a few more | The right amount | Yes, more than enough | Yes, there are too many |
|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 |

12. Please use the space below to make any other comments or suggestions about recreational boating facilities in your State.

_____

_____

_____

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 350 1) and the Privacy Act of 1974 (U.S.C. 552), please be advised that:

The gathering of information from applicants to assess recreational boating facility needs is authorized under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777k). Information from this survey will be used to assess the needs for recreational boating facilities. Your participation in completing this form is not required to obtain benefits under the Boating Infrastructure Grant Program. Once submitted, this survey becomes public information and is not protected under the privacy Act. The public reporting burden for this survey is estimated at 10 to 25 minutes per response, including time for gathering information and completing. Direct comments to the Service Information Collection Clearance Officer, (1018–0106), U.S. Fish and Wildlife Service, MS 222–ARLSQ; 1849 C Street N.W., Washington, D.C. 20240.

An agency may not conduct and a person is not required to complete a collection of information unless a currently valid OMB control number is displayed.

**PART C**

If you operate a marina or other tie-up facility in [name of State] that serves boats 26 feet or more in length, please answer the following questions. If you do not operate facilities for boats 26 feet or more in length but do operate an access site that services trailerable or car top boats under 26 feet in length, please go to Part D below.

IF YOU OPERATE MORE THAN 5 FACILITIES PLEASE ESTIMATE RESPONSES FOR ALL YOUR FACILITIES COMBINED. PLACE ANSWERS UNDER FACILITY #1.

**RECREATIONAL BOATING NEEDS ASSESSMENT QUESTIONNAIRE FOR PROVIDERS**

Please answer the following questions about your boating facility or access site in [name of State]. [Add comment about confidentiality if applicable under state law]

1. Are you a public or private boating facilities provider in [name of State]?

☐ Private provider available to the public (Non-government agency)

☐ Private provider unavailable to the public (You need not complete this questionnaire. If this is a mail survey, please stop and return the survey)

☐ Public provider (Government agency—includes private leases on public land)

☐ Neither (You need not complete this questionnaire. If this is a mail survey, please stop and return the survey)

2. How many boating facilities for boats over 26 feet do you operate in [name of State]?

☐_____facility(ies)

3. Please list the boating facility or facilities in [name of State] that you operate or manage for boats 26 feet or more in length.

| | Name of facility (marina, courtesy dock, etc) | County/city or town | Area (Lake, cove, slough, bay, harbor or section of river) | Latitude (longitude or GPS |
|---|---|---|---|---|
| Facility #1: | | | | |
| Facility #2: | | | | |
| Facility #3: | | | | |
| Facility #4: | | | | |
| Facility #5: | | | | |

4. For each facility listed in Question #3, indicate the requirements for boater use. (Check all that apply. List facilities in same order as Question #3.)

| | None (first come first served) | Club membership required | Reservations required | Fee charged |
|---|---|---|---|---|
| Facility #1 | ☐ | ☐ | ☐ | ☐ |
| Facility #2 | ☐ | ☐ | ☐ | ☐ |
| Facility #3 | ☐ | ☐ | ☐ | ☐ |
| Facility #4 | ☐ | ☐ | ☐ | ☐ |
| Facility #5 | ☐ | ☐ | ☐ | ☐ |

5. For each facility listed in Question #3, estimate the number of transient tie-up slips, permanent tie-up slips, transient moorings and permanent moorings. (List facilities in same order as Question #3.)

| | Number of transient slips/ tie-ups | Number of permanent slips/tie-ups | Number of transient moorings | Number of permanent moorings |
|---|---|---|---|---|
| Facility #1: | | | | |
| Facility #2: | | | | |
| Facility #3: | | | | |
| Facility #4: | | | | |
| Facility #5: | | | | |

6. For each facility listed in Question #3, identify the types of support features available at the facilities. (Check all that apply. List facilities in same order as Question #3.)

| | Gas fuel | Diesel fuel | Restrooms | Sewage pumpout/dump stations | Electricity | Water | Telephones |
|---|---|---|---|---|---|---|---|
| Facility #1 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Facility #2 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Facility #3 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Facility #4 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Facility #5 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

7. For each facility that you listed in Question #3, what repairs, replacements, expansions, or additions do you think are needed or you would do if you could? (Check all that apply. List facilities in same order as Question #3.)

| Facility #1 | None | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Transient slips or tie-ups | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Transient moorings | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Gasoline facilities | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Diesel fuel facilities | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Restrooms | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Pumpout/dump stations | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Electricity | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Water | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Telephone | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Oil disposal | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

| Facility #2 | None | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Transient slips or tie-ups | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Transient moorings | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Gasoline facilities | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Diesel fuel facilities | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Restrooms | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Pumpout/dump stations | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Electricity | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Water | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Telephone | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Oil disposal | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

| Facility #2 | None | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Other (specify) ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

| Facility #3 | None | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Transient slips or tie-ups ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Transient moorings ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Gasoline facilities ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Diesel fuel facilities ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Restrooms ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Pumpout/dump stations ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Electricity ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Water ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Telephone ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Oil disposal ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

| Facility #4 | None | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Transient slips or tie-ups ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Transient moorings ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Gasoline facilities ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Diesel fuel facilities ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Restrooms ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Pumpout/dump stations ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Electricity ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Water ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Telephone ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Oil disposal ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

| Facility #5 | None | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Transient slips or tie-ups ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Transient moorings ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Gasoline facilities ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Diesel fuel facilities ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Restrooms ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Pumpout/dump stations ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Electricity ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Water ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Telephone ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Oil disposal ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

8. For all of your facilities combined in [name of State], please identify how boaters know about your facilities. (Check all that apply).

| Paid advertising | State publications | Chamber of commerce | World wide web/Internet | Other (specify) | Other (specify) |
|---|---|---|---|---|---|
| ☐ | ☐ | ☐ | ☐ | | |

9. Below is a list of reasons why boaters may use the facilities you listed in Question #3. Why do you think the public uses each facility? (Check all that apply for each facility. List facilities in same order as Question #3.

| | Close to population centers | Good boating waters | Good support services (slips, fuel, restrooms, pumpouts, etc.) | Reasonable cost | Swimming opportunities | Fishing opportunities | Other (specify) |
|---|---|---|---|---|---|---|---|
| Facility #1 ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | |
| Facility #2 ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | |
| Facility #3 ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | |

| | Close to population centers | Good boating waters | Good support services (slips, fuel, restrooms, pumpouts, etc.) | Reasonable cost | Swimming opportunities | Fishing opportunities | Other (specify) |
|---|---|---|---|---|---|---|---|
| Facility #4 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | |
| Facility #5 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | |

10. Please rate the overall condition of the facility(ies) you listed in Question $3. (Please check one for each facility. List facilities in same order as Question #3.)

| | Poor (requires upgrade now) | Fair (will require upgrade within the next 2 to 5 years) | Good (will require upgrade within 6 to 10 years) | Excellent (no improvements needed for more than 10 years) |
|---|---|---|---|---|
| Facility #1 | ☐ | ☐ | ☐ | ☐ |
| Facility #2 | ☐ | ☐ | ☐ | ☐ |
| Facility #3 | ☐ | ☐ | ☐ | ☐ |
| Facility #4 | ☐ | ☐ | ☐ | ☐ |
| Facility #5 | ☐ | ☐ | ☐ | ☐ |

11. Do you think there are enough boat tie-up facilities in [name of State]?

☐ Yes ☐ No

12. If public funding sources were available for facility repair, improvement, expansion, or additions, would you be interested?

☐ Yes ☐ No

13. Please provide any comments about recreational boating facilities not covered in this section.

_____

_____

_____

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An agency may not conduct and a person is not required to complete a collection of information unless a currently valid OMB control number is displayed.

**PART D**

If you operate a boating facility or access site for trailerable or car top boats under 26 feet in length, please answer the following questions.

**IF YOU OPERATE MORE THAN 5 ACCESS SITES, PLEASE ESTIMATE FOR ALL YOUR FACILITIES COMBINED, PLACE ANSWERS UNDER FACILITY #1**

14. How many boating facilities or access sites for boats under 26 feet in length do you operate in [name of State]?

__facilities or access sites

15. Please list the boating facility(ies) or access site(s) that you operate or manage in [name of State] for boats under 26 feet in length. (Please list each specific site.)

| | Site name | County/city or town | Area (lake, cove, slough, bay, harbor, or section of river) | Latitute/longitude or GPS |
|---|---|---|---|---|
| Facility #1: | | | | |
| Facility #2: | | | | |
| Facility #3: | | | | |
| Facility #4: | | | | |
| Facility #5: | | | | |

16. For each facility listed in Question #15, please indicate any requirements for boater use. (Check all that apply. List access sites in same order as Question #15.)

| | None (first come first served) | Club membership required | Reservations required | Fee charged |
|---|---|---|---|---|
| Facility #1 | ☐ | ☐ | ☐ | ☐ |
| Facility #2 | ☐ | ☐ | ☐ | ☐ |
| Facility #3 | ☐ | ☐ | ☐ | ☐ |
| Facility #4 | ☐ | ☐ | ☐ | ☐ |
| Facility #5 | ☐ | ☐ | ☐ | ☐ |

17. For each facility listed in Question #15, identify the types of support features available at each facility. (Check all that apply. List access sites in same order as Question #15).

| | Carry down paths, etc. | Launch ramps | Boarding floats | Sewage pumpout/dump stations | Parking | Restrooms |
|---|---|---|---|---|---|---|
| Facility #1 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Facility #2 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Facility #3 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Facility #4 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Facility #5 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

18. For each facility listed in Question #15, what repairs, replacements, expansions, or additions do you think are needed? (Check one for each feature. List access sites in same order as Question #15.)

| Facility #1 | None needed | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Carry-down walkway to | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Launch ramp | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Boarding floats | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Parking | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Restrooms | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Pumpout/dump stations | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

| Facility #2 | None needed | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Carry-down walkway to | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Launch ramp | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Boarding floats | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Parking | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Restrooms | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Pumpout/dump stations | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

| Facility #3 | None needed | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Carry-down walkway to | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Launch ramp | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Boarding floats | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Parking | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Restrooms | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Pumpout/dump stations | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

| Facility #4 | None needed | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Carry-down walkway to water's edge | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Launch ramp | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Boarding floats | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Parking | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Restrooms | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Pumpout/dump stations | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

| Facility #5 | None needed | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Carry-down walkway to | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Launch ramp | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Boarding floats | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Parking | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Restrooms | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Pumpout/dump stations | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

19. For all of your facilities combined in [name of State], identify how boaters know about your facilities (Check all that apply.)

| Paid advertising | State publications | Chamber of Commerce | World wide web | Other (specify) | Other (specify) |
|---|---|---|---|---|---|
| ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

20. Below is a list of reasons why boaters may use facilities you identified in Question #15. Why do you think the public uses each facility? (Check all that apply. List access sites in same order as Question #15.)

| | Close to population centers | Good boating waters | Good support services (slips, fuel, restrooms, pumpouts, etc.) | Reasonable cost | Fishing opportunities | Swimming opportunities | Other (specify) |
|---|---|---|---|---|---|---|---|
| Facility #1 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | |
| Facility #2 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | |
| Facility #3 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | |
| Facility #4 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | |
| Facility #5 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | |

21. Please rate the overall condition of the facility(ies) you listed in Question #15. (Check one for each facility. List access sites in same order as Question #15.)

| | Poor (requires upgrade now) | Fair (will require upgrade within the next 2 to 5 years) | Good will require upgrade within 6 to 10 years) | Excellent (no improvements needed for more than 10 years) |
|---|---|---|---|---|
| Facility #1 | ☐ | ☐ | ☐ | ☐ |
| Facility #2 | ☐ | ☐ | ☐ | ☐ |
| Facility #3 | ☐ | ☐ | ☐ | ☐ |
| Facility #4 | ☐ | ☐ | ☐ | ☐ |
| Facility #5 | ☐ | ☐ | ☐ | ☐ |

22. Do you think there are enough boating facilities or access sites in [state name]?

☐ Yes ☐ No

23. If public funding sources were available for access site repair, improvement, expansion, or additions, would you be interested?

☐ Yes ☐ No

24. Please provide any comments about recreational boating facilities or access sites not covered in this section.

_____

_____

_____

Thank you for your help! If you would like a representative of this State to contact you about any questions and concerns or if you would like additional information about facility and site development funding sources, please list your name, facility, telephone number, and best time to contact you.

Name _____

Facility _____

Telephone _____

Time _____

**Paperwork Reduction Act and the Privacy Act—Notices**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 350 1) and the Privacy Act of 1974 (U.S.C. 552), please be advised that:

1. The gathering of information of fish and wildlife is authorized by:

(a) The Sportfishing and Boating Safety Act, Title VII, Subtitle D, Section 7404 (16 U.S.C. 777g–1); and,

(b) Title 50, Part 86, of the Code of Federal Regulations.

2. Information requested in this form is purely voluntary.

3. Routine use disclosures may also be made:

(a) To the U.S. Department of Justice when related to litigation or anticipated litigation;

(b) Of information indicating a violation or potential violation of statute, regulation, rule, order or license to appropriate Federal, State, local, or foreign agencies responsible for investigation or prosecuting the violation or for enforcing or implementing the statute, rule, regulations, order or license:

(c) From the record of an individual in response to an inquiry from a Congressional office made at the request of that individual (42 FR 1903: April 11, 1977).

4. For individuals, personal information such as home address and telephone number, financial data, and

personal identifiers (social security number, birth date, etc.) will be removed prior to any release of survey results.

5. The public reporting burden for this information collection varies on the specific activity use being requested. The relevant burden for the survey is 10 to 25 minutes. This burden estimate includes time for reviewing instructions, gathering and maintaining data and completing and reviewing the forms. Direct comments regarding the burden estimate or any other aspect of the forms to the Service Information Clearance Officer, Fish and Wildlife Service, Mail Stop 222, Arlington Square, U.S. Department of the Interior, 1849 C street, NW., Washington, D.C. 20240.

**Freedom of Information Act—Notice**

For organization, businesses, or individuals operating as a business (*i.e.,* permittees not covered by the Privacy Act), we request that yuo identify any information that should be considered privileged and confidential business information to allow the Service to meet its responsibilities under FOIA. Confidential business information must be clearly marked ''Business Confidential'' at the top of the letter or page and each succeeding page, and must be accompanied by a non-confidential summary of the confidential information. The non-confidential summary and remaining documents may be made available to the public under FOIA [43 CFR 2.15(d)(1)(i)].

**Application Processing Fee**

There is no processing fee associated with this survey.

[FR Doc. 02–295 Filed 1–4–02; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Distribution of Fiscal Year 2002 Contract Support Funds

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of method of distribution and use of FY 2002 contract support funds.

**SUMMARY:** The purpose of this announcement is to issue the Bureau of Indian Affairs (BIA) administrative instructions for implementing Public Law 93–638, as amended. These administrative instructions are designed to provide BIA personnel with assistance in carrying out their responsibilities when distributing Contract Support Funds (CSF). These instructions are not regulations establishing program requirements.

**DATES:** The CSF Needs Report for ongoing/existing contracts and annual funding agreements are due on July 15, 2002. The CSF Needs Reports for new and expanded contracts and annual funding agreements are due periodically throughout the year as the need arises. All new and expanded contracts and annual funding agreements starting between October 11, 2001 and January 1, 2002, will be considered to have a January 1, 2002, start date.

**ADDRESSES:** Send the CSF Needs Report to Jim Thomas, Bureau of Indian Affairs, Division of Self-Determination Services, 1849 C Street, NW., MS–4660–MIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Jim Thomas, Chief, Division of Self-Determination Services, Telephone (202) 208–5727.

**SUPPLEMENTARY INFORMATION:** A total of $133,209,000 is available for contract support requirements (excluding construction requirements) during FY 2002. Congressional language allows the use of $130,209,000 in FY 2002 to pay costs of ongoing/existing self-determination and self-governance awards for programs under contract/compact before FY 2002 and $3,000,000 for the Indian Self-Determination Fund (ISD) to be used for new and expanded contracts/compacts. Each BIA Regional Office and the Office of Self-Governance (hereinafter office) has the responsibility for tribes located within their respective region to work with the tribes in identifying new and expanded contracts and annual funding agreements and reporting this information to the Division of Self-Determination Services as mentioned in this announcement. CSF will be added to awards made under section 102 and title IV of the Indian Self-Determination and Education Assistance Act, as amended. Awards made under section 103 of this Act will not receive CSF to meet indirect costs.

**Basis for Payment of CSF**

The BIA may only pay indirect costs attributable to programs included in the BIA's Public Law 93–638 awards. Awards by the BIA with funds originating from other agencies which have been transferred to the BIA for award under Public Law 93–638 are not eligible for CSF appropriated to the BIA. Contract support/indirect costs requirements for these awards must be met from within the amounts transferred. (One example would include funds transferred to the BIA from the Department of Transportation for roads construction.) BIA will use tribal indirect cost rates to determine the amount of CSF to be paid to contracting tribes and tribal organizations and self-governance tribes and tribal consortia. In determining legitimate indirect cost requirements each area and self-governance director should fund only those contracting or compacting tribal organizations that have an approved indirect cost rate or indirect cost proposal currently under consideration by the Office of Inspector General. In those instances where a tribe or tribal organization has more than one approved rate or a current proposal under consideration by the Office of the Inspector General, the director should use the most current rate or a pending proposal in determining the amount to award. For those tribes who are unable to negotiate an indirect cost rate because of circumstances beyond their control (i.e., which do not have the administrative capability to negotiate a rate), awarding officials may negotiate reasonable lump sum amounts with these tribes.

**Indirect Cost Computation**

The following steps must be followed by BIA personnel when computing contract support annual funding requirements:

(1) Determine total current year program funds.

(2) Subtract exclusions (See indirect cost agreements). Examples of exclusions include capital expenditures and pass through funds (those programs requiring minimal administrative effort). Exclude other agency appropriations awarded by the BIA (i.e., roads construction funds transferred from the Department of Transportation).

(3) Direct cost base (results of steps 1 and 2).

(4) Multiply indirect cost rates against base determined in step 3.

(5) Results of step 4 equals indirect costs amount at 100 percent.

(6) Multiply current year CSF funding percentage against step 5.

(7) The result of step 6—The amount of current year CSF funding to be added to contract.

**Ongoing/Existing Contracts/Annual Funding Agreements—Method of Distribution**

Each office will send CSF Needs Report to the Central Office for ongoing contracts and annual funding agreements by July 15, 2002. A final determination of contract support will be made on or about July 31, 2002. If

these reports show that $130,209,000 will not be enough to cover the entire need, this amount will be distributed pro rata, so that all contractors and compactors receive the same percentage of their reported need.

Should the amount provided for these existing contracts and annual funding agreements prove insufficient, a tribe or group of tribes may wish to reprogram funds to make up deficiencies necessary to recover full indirect costs. This tribal reprogramming authority is limited to funds from their Tribal Priority Allocation (TPA), or annual funding agreement. Congressional appropriations language does not provide authority for the BIA to reprogram funds from other Bureau programs to meet any CSF shortfalls.

For programs other than TPA, tribes are not constrained from recovering full indirect costs from within the overall program and contract support funds awarded for each program.

Each office should initially award 65 percent of required contract support to each contract/annual funding agreement meeting the criteria established below.

All contractors and self-governance tribes/consortia with either an approved indirect cost rate, current indirect cost proposal, or FY 2002 approved lump sum amount, are immediately eligible to be paid 65 percent of their need. On approximately July 31, 2002, all contractors and self-governance tribes/consortia should receive their pro rata share of all remaining CSF.

An ongoing/existing contract or annual funding agreement is defined as a BIA program operated by the tribal contractor or compactor on an ongoing basis which has been entered into before the current fiscal year. An increase or decrease in funding from year-to-year for such contracts or annual funding agreements would not affect the designation of such contracts or annual funding agreements as ongoing. An assumption of additional BIA program responsibilities would be required to trigger a change in designation.

**Indian Self-Determination Fund—New and Expanded Contracts/Compacts and Start-Up Costs**

Each office will send CSF Need Reports to the Central Office for new and expanded contracts and annual funding agreements periodically throughout the year as new contracts or annual funding agreements are awarded or existing contracts or annual funding agreements are expanded. Funds will be provided to the offices as these reports are received and will be taken from the $3,000,000. These funds will be distributed on a first-come, first-served basis at 100 percent of need using the office reports.

If the $3,000,000 is depleted, new or expanded contracts or annual funding agreements awarded after this fund has been exhausted will not be provided any CSF during this fiscal year. Requests received after this fund has been exhausted will be considered first for funding in the following year, from funds appropriated for this purpose.

The Indian Self-Determination Act defines the term start-up cost (Sec. 106(a)(5)) as follows:

Subject to paragraph (6) of section 106, during the initial year that a self-determination contract is in effect, the amount required to be paid under paragraph (2) will include start-up costs consisting of the reasonable costs that have been incurred or will be incurred on a onetime basis under the contract necessary to:

(a) Plan, prepare for, and assume operation of the program, function, service, or activity that is the subject of the contract; and,

(b) Ensure compliance with the terms of the contract and prudent management.

For specific guidance, including examples of start-up costs, see the BIA web site under Tribal Services/Self-Determination Services.

**Priority of Funding for New and Expanded Contracts/Annual Funding Agreements**

Contract support will be awarded from the ISD fund to all new and expanded contracts/annual funding agreements based on the start date of the award, and the application date, on a first-come, first-served basis. An Indian Self-Determination Fund ''applicant roster'' will be maintained, which will list, in order of priority, the name of the tribe or tribal organization, the name of the program, the start date, the application date, the amount of program funds, the program cost code(s), the amount of contract support funds required, and the date of approved indirect cost rate agreement or lump sum agreement.

''Start date'' means the date or beginning of operation of the new or expanded portion of the contract or annual funding agreement by the tribe/consortium or tribal organization. However, because the Self-Determination Act provides that contracts/annual funding agreements will be on a calendar year basis unless otherwise provided by the tribe, any start date on or before January 1 of each year will be considered a January 1 start date.

''Application date'' means the date of the request by the tribe, which includes:

(1) A tribal resolution requesting a contract or annual funding agreement;

(2) A summary of the program or portion of that to be operated by the tribe/consortium or tribal organization; and

(3) A summary identifying the source and amount of program or services funds to contracted or included in an annual funding agreement and contract support requirements.

If two tribes or tribal organizations have the same start date and application date, the next date for determination of priority will be the date the fully complete application was received by the BIA.

If all are equal, and if funds remaining in the ISD fund are not enough to fill the entire amount of each award's contract support requirement, then each will be awarded a proportionate share of its requirement and will remain on the Indian Self-Determination Fund roster in appropriate order of priority for future distributions.

New contract/annual funding agreement is defined as the initial transfer of a program, previously operated by the BIA to the tribe/consortium or tribal organization.

An expanded contract/annual funding agreement is defined as a contract/annual funding agreement which has become enlarged, during the current fiscal year through the assumption of additional programs previously performed by the BIA.

**Criteria for Determining CSF Need for Ongoing/Existing Contracts/Annual Funding Agreements**

CSF for ongoing and existing contracts/annual funding agreements will be determined using the following criteria:

(1) All TPA contracted programs or those programs included in annual funding agreements in FY 2001 and continued in FY 2002, including contracted or annual funding agreement programs moved to TPA in FY 2002.

(2) Direct program funding increases due to inflation adjustments and general budget increases.

(3) TPA programs started or expanded in FY 2002 that are a result of a change in priorities from other already contracted/annual funding agreement programs.

(4) CSF differentials associated with tribally-operated schools that receive indirect costs through the application of the administrative cost grant formula. These differentials are to be calculated by using the criteria prescribed in the Choctaw decision dated September 18,

1992, issued by the Contracting Officer, Eastern Area Office. Copies of this decision can be obtained by calling the telephone number provided in this announcement.

(5) CSF will be distributed to the Office of Self-Governance for ongoing annual funding agreements, on the same basis as regional offices.

(6) Funds available for Indian Child Welfare Act (ICWA) programs or reprogrammed from ICWA to other programs will be considered ongoing for payment of contract support costs.

(7) The use of CSF to pay prior year shortfalls is not authorized.

(8) Programs funded from sources other than those listed above that were awarded in FY 2001 and are to be awarded in FY 2002 are considered as ongoing.

This notice is published under the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

Dated: December 19, 2001.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 02–300 Filed 1–4–02; 8:45 am]

**BILLING CODE 4310–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–467]**

### Certain Canary Yellow Self-Stick Repositionable Note Products; Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 3, 2001, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Minnesota Mining and Manufacturing Company. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain canary yellow self-stick repositionable note products by reason of infringement of U.S. Trademark Registration No. 2,390,667. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order and permanent cease and desist orders.

**ADDRESSES:** The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's ADD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDI-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

**FOR FURTHER INFORMATION CONTACT:** Jeffrey R. Whieldon, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2580.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2001).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 17, 2001, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain canary yellow self-stick repositionable note products by reason of infringement of U.S. Trademark Registration No. 2,390,667, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Minnesota Mining and Manufacturing Company, 3M Center, 2501 Hudson Road, St. Paul, Minnesota 55119.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Print-Inform GmbH & Co., Borsigstr. 8, 24568 Kaltenkirchen, Germany.

Janel, S.A. de C.V., Soja 85, Col. Granjas Esmerelda, Distrito Federal CP 09810, Mexico.

(c) Jeffrey R. Whieldon, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

By order of the Commission.

Issued: December 28, 2001.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 02–195 Filed 1–4–02; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–02–001]**

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** January 10, 2002 at 2 p.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. *Agenda for future meeting:* None.
2. Minutes
3. Ratification List
4. Inv. Nos. 731–TA–986–987 (Preliminary) (Ferrovanadium from China and South Africa)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on January 10, 2002; Commissioners opinions are currently scheduled to be transmitted to the Secretary of Commerce on January 17, 2002.)
5. Inv. Nos. 701–TA–267–268 and 731–TA–304–305 (Review) (Remand) (Top-of-Stove Stainless Steel Cooking Ware from Korea and Taiwan)—briefing and vote. (The Commission is currently scheduled to transmit its view on remand to the Court of International Trade on January 25, 2002.)
6. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier announcement of this meeting was not possible.

By order of the Commission.

Issued: January 3, 2002.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 02–429 Filed 1–3–02; 1:50 pm]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree resolving the liability of Mickie E. Jarvill in *United States of America* v. *Arlington Valley Land Company, Inc., et al.,* Civil Action No. C99–1711C(M) (W.D. Wa.), was lodged with the United States District Court for the Western District of Washington on October 11, 2001.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, resulting from the unauthorized discharge of dredged or fill materials into waters of the United States at a location near Arlington, Washington (the ''Site''). The consent decree enjoins Mickie E. Jarvill from discharging dredged or fill material into waters of the United States. The consent decree further requires that Mickie E. Jarvill pay civil penalties plus interest in the amount of $90,000 over a five-year period.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: Michael J. Zevenbergen, Attorney, Environmental Defense Section, Seattle Field Office, c/o NOAA/Damage Assessment, 7600 Sand Point Way NE, Seattle, WA 98115, and should refer to *United States of America* v. *Arlington Valley Land Company, Inc., et al.,* DJ Reference No. 90–5–1–4–402.

The proposed consent decree may be examined at the Clerk's Office, United States District Court, 1010 Fifth Avenue Seattle, WA 98104.

**Letitia J. Grishaw,**

*Chief, Environmental Defense Section, Environment and Natural Resources, Division, Department of Justice.*

[FR Doc. 02–276 Filed 1–4–02; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Specialty Minerals, Inc., John J. Foley, Jr. and Dorothy K. Foley,* Civil Action No. 3:01CV1853 (RNC) (D. Conn.), was lodged with the United States District Court for the District of Connecticut on October 3, 2001. This proposed Consent Decree concerns a complaint filed by the United States against Specialty Minerals, Inc., John J. Foley, Jr. and Dorothy K. Foley, pursuant to sections 301(a) and 404 of the Clean Water Act, 33 U.S.C. 1311(a) and 1344, and imposes civil penalties against Defendant, Specialty Minerals, Inc., for the unauthorized discharge of dredged or fill material into waters of the United States located in wetlands adjacent to a tributary of Blackberry River, located in North Canaan, Connecticut.

The proposed Consent Decree requires the payment of civil penalties, in addition to the performance of onsite mitigation and partial restoration at the site of the violation.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the of publication of this notice. Please address comments to Brenda M. Green, Assistant United States Attorney, United States Attorney's Office, 157 Church Street, 23rd Floor, New Haven, Connecticut 06510 and refer to *United States* v. *Specialty Minerals, Inc., John J. Foley, Jr. and Dorothy K. Foley,* DJ#90–5–1–1–05702.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Connecticut, 141 Church Street, New Haven, Connecticut 06510.

**Brenda M. Green,**

*Assistant U.S. Attorney, U.S. Attorney's Office, 157 Church Street, 23rd Floor, New Haven, CT 06510, (203) 821–3700.*

[FR Doc. 02–275 Filed 1–4–02; 8:45 am]

**BILLING CODE 4410–15–M**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (02–001)]**

### U.S. Centennial of Flight Commission

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the U.S. Centennial of Flight Commission.

**DATES:** Wednesday, January 30, 2002, 1:00 p.m. to 5:00 p.m.

**ADDRESSES:** National Air and Space Museum, Independence Avenue, SW between 6th and 7th Streets, Directors Conference Room. Please check in at the security desk to be cleared into the building. Please call Ms. Beverly Farmarco at 202/358–1903 if you plan to attend so your name can be added to the attendees list.

**FOR FURTHER INFORMATION CONTACT:** Ms. Beverly Farmarco, Code I, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1903.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows

—Report from Carter Ryley Thomas
—Budget Discussions
—Next First Flight Centennial Federal Advisory Board Meeting
—What the Commission Wants Accomplished in FY 2002
—Centennial Partner Deliberations
—Education Program

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

**Sylvia K. Kraemer,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 02–316 Filed 1–4–02; 8:45 am]

**BILLING CODE 7510–01–P**

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Cyberinfrastructure (#10719).

*Date/Time:* Tuesday, January 22, 2002, 8 am to 5 pm PST.

*Place:* Caltech's Center for Advanced Computing Research, Pasadena, California in room 120 of the Powell-Booth Laboratory for Computational Science, and Room 1150, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, and on the Access Grid, Lucky Labrador Virtual Venue.

*Type of Meeting:* Open Meeting. The meeting will also involve the use of the Access Grid to interview witness. Persons wishing to attend the meeting at NSF should contact Richard Hilderbrandt to arrange for a visitor's pass. Persons wishing to attend the meeting at Caltech in Pasadena should contact Paul Messina for information. Persons wishing to watch the proceedings through the use of the Access Grid are invited to join the meeting in the Lucky Labrador Virtual Venue.

*Contact Persons:* Dr. Richard Hilderbrandt, Program Director, Division of Advanced Computational Infrastructure and Research, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Tel: (703) 292–7093, e-mail: *rhilderb@nsf.gov.* Paul Messina, Director, Center for Advanced Computing Research, Mail Code 158–79, 1200 E. California Blvd., California Institute of Technology, Pasadena, CA 91125. Tel: (626) 395–3907, e-mail: *messina@cacr.caltech.edu.*

*Purpose of Meeting:* To obtain testimony from expert witnesses to pertinent to the preparation of a report to the National Science Foundation concerning the broad topic of advanced cyberinfrastructure and the evaluation of the existing Partnerships for Advanced Computational Infrastructure.

*Agenda (all times PST):*

Tuesday, 22 January 2002

8–12:30 am—In-Person and Access Grid Testimony (8 people)
12:30–1:30 pm—Lunch
1:30–5 pm—In-Person and Access Grid Testimony (7 people)

Dated: January 2, 2002.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 02–289 Filed 1–4–02; 8:45 am]

**BILLING CODE 7555–01–M**

## NUCLEAR REGULATORY COMMISSION

### Sunshine Notice

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATES:** Weeks of January 7, 14, 21, 28, February 4, 11, 2002.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

*Week of January 7, 2002*

There are no meetings scheduled for the Week of January 7, 2001.

*Week of January 14, 2002—Tentative*

Tuesday, January 15, 2002.

9:30 a.m.—Briefing on Status of Nuclear Materials Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*www.nrc.gov*

*Week of January 21, 2002—Tentative*

There are no meetings scheduled for the Week of January 21, 2002.

*Week of January 28, 2002—Tentative*

Tuesday, January 29, 2002

9:30 a.m.—Briefing on Status of Nuclear Reactor Safety (Public Meeting) (Contact: Mike Case, 301–415–1134).

This meeting will be webcast live at the Web address—*www.nrc.gov*

Wednesday, January 30, 2002

9:25 a.m.—Affirmative Session (Public Meeting) (If needed)
9:30 a.m.—Briefing on Status of the Office of the Chief Information Officer (OCIO) Programs, Performance, and Plans (Public Meeting) (Contact: Jackie Silber, 301–415–7330)

This meeting will be webcast live at the Web address—*www.nrc.gov*

2:00 p.m.—Discussion of Intragovernmental Issues (Closed—Ex. 1 & 9)

*Week of February 4, 2002—Tentative*

Wednesday, February 6, 2002

9:25 a.m.—Affirmative Session (Public Meeting) (If needed)
9:30 a.m.—Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

*Week of February 11, 2002—Tentative*

There are no meetings scheduled for the Week of February 11, 2002.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

Additional Information: By a vote of 5–0 on December 27 and 28, 2001, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of (a) Private Fuel Storage (Independent Spent Fuel Storage Installation) '' Docket No. 72–22–ISFSI; Petition to Suspend Proceedings in Response to Terrorist Attacks; (b) Duke Energy Corp. (McGuire Nuclear Station, United 1 & 2; Catawba Nuclear Station, Units 1 & 2); Blue Ridge Environmental Defense League's (''BREDL's'') Petition to Dismiss Licensing Proceeding or, in the Alternative, Hold it in Abeyance (Oct. 23, 2001); and (c) Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility); Georgians Against Nuclear Energy & Nuclear Control Institute's Petition to Suspend Construction Authorization Proceeding for Proposed Plutonium Fuel (MOX) Fab Facility,'' be held on December 28, 2001, and no less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: January 3, 2002.

**David Louis Gamberoni,**

*Technical Coordinator, Office of the Secretary.*

[FR Doc. 02–405 Filed 1–3–02; 11:41 am]

**BILLING CODE 7590–01–M**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the

Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 7, 2002: Closed meetings will be held on Tuesday, January 8, and Thursday, January 10, 2002, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the closed meetings scheduled for Tuesday, January 8, 2002, and Thursday, January 10, 2002, will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Formal orders;

Amicus considerations; and

Adjudicatory matters.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 31, 2001.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 02–00333 Filed 1–2–02; 4:07 pm]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### In the Matter of WSF Corporation; Order of Suspension of Trading

January 3, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of WSF Corporation (''WSF''), a Delaware corporation headquartered in Honolulu, Hawaii. Questions have been raised about the adequacy and accuracy of publicly disseminated information because WSF has not filed its required periodic reports for any period subsequent to the quarter ended September 30, 2000. Moreover, WSF management has informed the Commission staff that WSF still has not retained a public auditor for its financial statements for the fiscal year ended December 31, 2000.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST on January 3, 2002, through 11:59 p.m. EST on January 16, 2002.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–399 Filed 1–3–02; 11:55 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45220; File No. SR–ISE–2001–33]**

### Self Regulatory Organizations; International Securities Exchange LLC; Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Revising the Original Listing Criteria for Underlying Securities in ISE Rule 502.

### I. Introduction and Description of the Proposal

On November 19, 2001, the International Securities Exchange LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend ISE Rule 502(b)(5) to provide an alternative listing requirement for underlying securities that satisfy all of the initial listing requirements in ISE Rule 502, ''Criteria for Underlying Securities,'' other than the requirement in ISE Rule 502(b)(5) that the market price per share of the underlying security be at least $7.50 per share for the majority of business days during the three calendar months preceding the date of selection. Specifically, the Exchange proposes to adopt ISE Rule 502(b)(5)(ii), which will permit the Exchange to list options on securities that satisfy all of the initial listing requirements other than the $7.50 per share requirement so long as: (1) The underlying security meets the guidelines for continued approval in ISE Rule 503, ''Withdrawal of Approval of Underlying Securities;'' (2) options on the underlying security are traded on at least one other registered national securities exchange; and (3) the average daily trading volume for the options over the last three calendar months preceding the date of selection has been at least 5,000 contracts.

The proposed rule change was published for comment in the **Federal Register** on December 6, 2001.[3] The Commission received no comments on the proposal. On December 6, 2001, the Exchange filed Amendment No. 1 to the proposed rule change with the Commission.[4] On December 31, 2001, the Exchange filed Amendment No. 2 to the proposed rule change with the Commission.[5] This order approves the proposed rule change, as amended, on an accelerated basis. In addition, the Commission is publishing notice to solicit comments on and is simultaneously approving, on an accelerated basis, Amendment No. 2 to the proposal.

### II. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder.,[7] The Commission finds specifically that the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45119 (November 30, 2001), 66 FR 63423.

[4] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 4, 2001 (''Amendment No. 1''). In Amendment No. 1, the Exchange added ''trading'' to the proposed text of ISE Rule 502(b)(5)(ii) to clarify that the requirement in the third clause of ISE Rule 502(b)(5)(ii) refers to the average daily trading volume of an option. This is a technical amendment and is not subject to notice and comment.

[5] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division, Commission, dated December 28, 2001 (''Amendment No. 2''). In Amendment No. 2, the Exchange requested that the Commission grant accelerated approval to the proposal.

[6] 15 U.S.C. 78f.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

change is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to promote investors and the public interest.

The Commission believes that the ISE's proposal should benefit investors by enhancing competition and providing investors with an additional forum for trading options that are traded on at least one other registered national securities exchange and that satisfy the other criteria in ISE Rule 502(b)(5)(ii).[9] Under the proposal, an underlying security must meet all of the requirements in ISE Rule 502 other than the $7.50 per share requirement and must meet the guidelines for continued approval under ISE Rule 503. The Commission believes that these requirements should help to ensure that options traded on the ISE are based on securities of companies that are financially sound and subject to adequate minimum standards. In addition, because ISE Rule 502(b)(5)(ii) requires that options on an underlying security trade at least one other registered national securities exchange, the proposal will not permit the trading of any additional options that are not currently traded on a registered national securities exchange.

The ISE asked the Commission to approve the proposal of an accelerated basis to allow the ISE to begin to list several actively traded option classes that currently trade on other options exchanges prior to the January 2002 expiration.[10] The Commission finds good cause for approving the proposed rule change and Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of the proposal will allow the ISE to promptly begin trading options that currently trade on other options exchanges, thereby providing investors with an additional forum for trading these options. In addition, the Commission notes that it received no comments on the proposed rule change. Amendment No. 1 strengthens the ISE's proposal by clarifying the text of ISE Rule 502(b)(5)(ii). Amendment No. 2 requests accelerated approval of the proposal and explains the ISE's reasons for requesting accelerated approval. Accordingly, the Commission finds that there is good cause, consistent with sections (6)(b)(5)A[11] and 19(b)(2) of the Act,[12] to approve the proposal and Amendment Nos. 1 and 2 on an accelerated basis.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 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 ISE. All submissions should refer to file number SR–ISE–2001–33 and should be submitted by January 28, 2002.

## IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–ISE–2001–33), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–286 Filed 1–4–02; 8:45 am]

**BILLING CODE 8010–01–M**

[8] 15 U.S.C. 78(b)(5).

[9] As noted above, ISE Rule 502(b)(5)(ii) will permit the ISE to list options on an underlying security where: (1) The underlying security meets the guidelines for continued approval in ISE Rule 503; (2) options on the underlying security are traded on at least one other registered national securities exchange; and (3) the average daily trading volume for the options over the last three calendar months preceding the date of selection has been at least 5,000 contracts.

[10] *See* Amendment No. 2, *supra* note 5.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] *ID.*

[14] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## Environmental Impact Statement: Los Angeles County, CA

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

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Los Angeles County, California.

**FOR FURTHER INFORMATION CONTACT:** Cesar Perez, Senior Transportation Engineer, Federal Highway Administration, California Division, 980 Ninth Street, Suite 400 Sacramento, CA 95814–2724, Telephone: (916) 498–5860.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an Environmental Impact Statement (EIS) on a proposal to improve Interstate Route 405 (I–405) in Los Angeles County. The proposed action involves the construction of a High Occupancy Vehicle (HOV) lane, in the northbound direction, between just south of the Interstate Route 10 (I–10) Connector and Greenleaf Street, a distance of approximately 10 miles. The proposed project may require additional ROW as well as possible entrance/exit ramp reconfigurations and/or closures. The purpose of the proposed project is considered necessary to provide continuity and connectivity in the Regional HOV system, alleviate traffic congestion, improve mobility, access, and goods movement on the I–405 freeway in the Los Angeles County area. Alternatives under consideration include:

*Alternative 1:* No Build Alternative.

*Alternative 2:* The widening of the existing facility to add a northbound HOV lane.

*Alternative 3:* The widening of the existing facility to add a northbound HOV lane and restore southbound freeway lane and shoulder widths to current design standards.

*Alternative 4:* The widening of the existing facility to provide for four HOV lanes (two each, both northbound and southbound) on an elevated viaduct, within the freeway median, throughout and project limits.

*Alternative 5:* Transit Enhancement Alternative. This would involve design features that would facilitate increased transit use in the corridor.

*Alternative 6:* Transportation Systems Management/Transportation Demand Management. These basic alternatives may have additional design variations at specific locations in response to social, economic and environmental impacts of extraordinary magnitude, which may be identified during upcoming studies and analysis. **Note:** As required by the National Environmental Policy Act (NEPA), all other reasonable alternatives will be considered. These alternatives may be refined, combined with various different alternative elements, or be removed from further consideration, as more analysis is conducted on the project alternatives.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. An agency scoping meeting will be held on January 16, 2002, at 3 pm, at the Veterans Administration 11301 Wilshire Boulevard. In addition, initial scoping meetings, for the general public, will be held on January 16, 2002, at the Veterans Administration 11301 Wilshire Boulevard, from 6 pm to 8 pm, and on January 17, 2002, at the Radisson Hotel 15433 Ventura Blvd, Sherman Oaks, from 6 pm to 8 pm. Additional public notice will be given of the time and place of these meetings.

Public meetings will be held after the draft EIS is completed. Public notice will be given of the time and place of the meetings. The draft EIS will be available for public and agency review and comment prior to the formal public hearing(s).

To ensure that the full range of issues related to the proposed routes are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the addressed provided above.

(Catalog of Federal Assistance Program Number 20.205, Highway Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Issued on: December 27, 2001.

**Cesar E. Perez,**

*Senior Transportation Engineer, Program Delivery Team-South, Sacramento, California.*

[FR Doc. 02–41 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–22–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's argument in favor of relief.

**Durbin & Greenbrier Valley Railroad, Inc.**

[Docket Number FRA–1999–5183]

The Durbin & Greenbrier Valley Railroad, Inc. (DGVR) seeks a waiver of compliance from certain provisions of the Safety Glazing Standards, 49 CFR 223.11, safety glazing requirements for existing locomotives.

DGVR stated that it has a locomotive (BL–2) which was built in 1948. The locomotive is on loan from the West Virginia State Rail Authority. This locomotive is used sporadically on track leased by DGVR's West Virginia Central Division.

DGVR requests the waiver based on the following three reasons: (1) The locomotive will be operated one to six excursions per week along 28 miles of rural and wildness track. There is no history of vandalism along this track. Most of this track passes through remote areas. Speed along the entire track is restricted under yard limit rules to no more than 15 miles per hour. There is only one overpass over the track and the overpass is a protected flood gate overpass which is continually patrolled. (2) The locomotive is a rare 1948 vintage BL–2 with the original glazing intact. Only a few of these types of engines were produced. Altering glazing on this old locomotive would change its appearance and would detract from its historic value and appeal. (3) This locomotive was originally built strictly for branch line service and it will be used exclusively in this manner.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number 1999–5183) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on December 17, 2001.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 02–308 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**Farmrail System, Incorporated**

[Docket Number FRA–2001–9998]

The Farmrail System owns and operates three passenger coaches which were built in 1954–56. These coaches are not used in regular service, but only on a limited seasonal basis primarily in conjunction with the Oklahoma Tourism and Recreation Department's resort and conference center located at Quartz Mountain State Park. The cars operate on trackage owned by the Oklahoma Department of Transportation for which Farmrail acts as lessee-operator. The excursion trains operate from a station near the entrance to Quartz Mountain State Park and run

northward around Lake Lugert through a sparsely populated area to Lone Wolf, Oklahoma, and back. Farmrail requests relief from the requirements of Title 49 Code of Federal Regulations (CFR) 223.15 *Requirements for existing passenger cars* due to the infrequent use of the cars, the planned usage for excursion service, and the cost of installing compliant glazing. The cars are former VIA Rail Canada equipment, and have a double-pane combination of 1/4-inch thick safety glass inside and plate glass outside. This glazing system remains the standard in Canada for passenger equipment, and the petitioner believes that the operation of these cars, as equipped, would not pose a safety hazard to passengers or employees.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2001–9998) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room P1–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on January 2, 2002.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 02–312 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**Kansas City Southern Railway Company (KCS)**

[Docket Number FRA–2001–9746]

The Kansas City Southern Railway Company (KCS) seeks a permanent waiver of compliance with the Railroad Safety Appliance Standards, 49 CFR part 231.27(b)(3) which states that the location of the end platform shall be ''One (1) centered on each end of car between inner ends of handholds not more than eight (8) inches above top of center sill.'' KCS has a series of 138 box cars, numbered KCS 125550 through KCS 125688, that were rebuilt in 1999. During the rebuild the end platforms were added to both ends of each car with approximately one inch off the center of the car. KCS's petition did not provide the specific ''eccentricity'' of the end platforms as measured from the center between inner ends of handholds. KCS believes this defect creates no unsafe conditions.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2001–9746) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl-401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on January 2, 2002.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 02–311 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

**Massachusetts Bay Transportation Authority**

[Docket Number FRA–2000–8044]

Massachusetts Bay Transportation Authority (MBTA) seeks to resubmit a petition for reconsideration of a temporary waiver of compliance with the Railroad Safety Appliance Standards, 49 CFR 231.12(c)(4), which requires passenger car end handholds be securely fastened with bolts or rivets. MBTA states that the end handholds on their Bombardier and Kawasaki fleets of passenger coaches, as currently configured, are fastened with bolts to a slotted block that is welded to the end sill during the manufacturing process.

MBTA states that there are 146 Bombardier coaches in service since 1987–90 with no recorded failures, accidents, or injuries attributable to either the end handhold or the welded mounted blocks. There are 75 Kawasaki coaches that have been in service since 1990–91 and 17 in service since 1998 with no reported injuries attributable to the handhold or mounting blocks used to secure them.

MBTA reports having performed a recent inspection of both fleets, with no defects in the welds securing the

mounting blocks being detected. In addition, MBTA states that the weldment is inspected daily in accordance with the MBTA's Commuter Rail Maintenance Sheets, CRM–12, Daily Trip Inspection. In the event a defect is noted, the coach would immediately be removed from service with written notification to the local FRA Office. A remedial action plan would be developed with concurrence from FRA to ensure the repair meets or exceeds the standard of the original design. MBTA states that they are at 100% utilization of their coach fleet and removing these cars from service, for retrofit, would impose an undue financial burden without substantially improving safety. They submit that of the four possible retrofits they have considered the least expensive would cost approximately $125,000.00.

This request includes 146 Bombardier coaches numbered 350–389, 600–653, 1600–1652, excluding coach 1648 and 92, Kawasaki coaches numbered 700–749, 1700–1724 and 750–766. The coaches would remain in service until they receive their mid-life overhaul, when a modification would be engineered. For the 146 Bombardier coaches, this is tentatively scheduled for July 2002 and the Kawasaki coaches for July 2004. On November 24, 2000, a letter of denial was forwarded to MBTA (Docket FRA–2000–8044–3). At that time, FRA had determined insufficient information was presented, particularly, in regards to repairs. FRA has indicated to the petitioner that the agency is willing to consider an interim waiver to cover welded securement until an industry standard has been approved and adopted by the industry and FRA. FRA requested that MBTA's petition include information detailing a quality control process for repairing the weldment in the event of damage or failure.

On April 2, 2001, MBTA resubmitted a petition for interim waiver of compliance of Railroad Safety Appliances Standards, 49 CFR 231.12 (Docket FRA–2000–8044–4). The coaches for which the waiver is requested are currently in service and are used to provide commuter rail service throughout Massachusetts. MBTA is resubmitting this petition for interim waiver with the information by incorporating ATPA's proposed ''Repair Procedure for Welded Support Brackets,'' as the standard for repair of the end handholds, thus insuring American Welding Society (AWS) certified repair methods.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2000–8044) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on January 2, 2002.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 02–310 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

### The Minnesota Northern Railroad

[Waiver Petition Docket Number FRA–2001–10214]

The Minnesota Northern Railroad owns and operates a caboose, number MNN 019. This caboose is not used in regular service, but only on a limited basis in work train service, to transport railroad officials and private persons for typical railroad business purposes. The caboose will primarily be stored on a live rail siding. The car operates on the Minnesota Northern Railroad in a rural/suburban area which is 50% wooded and 50% cultivated farm land. The MNN requests relief from the requirements of Title 49 Code of Federal Regulations (CFR) § 223.13 Requirements for existing cabooses due to the infrequent use of the caboose, the planned usage for work and special train service, and the cost of installing compliant glazing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2001–10214) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room P1–401 (Plaza Level), 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on January 2, 2002.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 02–313 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety

standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**Ohio Central Railroad**

[Waiver Petition Docket Number FRA–2000–7351]

The Ohio Central Railroad owns and operates a caboose, number OHCR 556, which was built in 1976. This caboose is not used in regular service, but only on a limited basis in work train service. The car operates on the Ohio Central Railroad, which is a Class III railroad, operating a single track, unsignaled, line between South Zanesville and New Lexington, Ohio, a distance of 25 miles, with a branch to Glass Rock, Ohio, a distance of approximately 8 miles. The railroad operates in mainly a rural area, with South Zanesville being the largest population center. The petitioner reported that there were no records of vandalism or stoning of moving trains since they began operation in 1986. The OHCR requests relief from the requirements of Title 49 Code of Federal Regulations (CFR) 223.13 Requirements for existing cabooses due to the infrequent use of the caboose, the planned usage for work train service, and the cost of installing compliant glazing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2000–7351) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room P1–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on January 2, 2002.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 02–309 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**Union Pacific Railroad Company**

[Docket Number FRA–2001–11014]

The Union Pacific Railroad Company (UP) seeks a permanent waiver of compliance with the Locomotive Safety Standards, 49 CFR part 229.21(a), as it pertains to the record keeping requirement for locomotive daily inspection reports. If their request is granted, UP would file the required report electronically in a secure centralized database that would be set up to track and store the records for the required ninety-two days. The railroad states that each employee performing the inspections has been provided a unique electronic identification which will be utilized in place of the signature. All requirements, date, time location, person conducting inspection and any non-complying conditions will be reported electronically. UP utilizes an onboard record of daily inspections and will continue to do so if their request is granted.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2001–11014) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, D.C. 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on December 17, 2001.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator, for Safety Standards and Program Development.*

[FR Doc. 02–315 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waivers of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**WATCO Companies, Inc.**

[Docket Number FRA–2001–10593]

WATCO Companies, Inc., (WATCO) has petitioned the FRA for a waiver of compliance from certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive, WAMX 804, which is operated at National Starch & Chemical, 1515 Drover Street, Indianapolis, Indiana 46221.

Locomotive WAMX 804 is covered by 49 CFR part 223.1 which states: 223.1 Scope. ''This part provides minimum requirements for glazing materials in order to protect railroad employees and railroad passengers from injury as a result of objects striking the windows of locomotives, caboose and passenger cars.''

Locomotive WAMX 804 is operated by WATCO Companies, Inc., Switching

Services in an industrial/plant switching operation. The locomotive operates in two areas of speed restriction, one at 5 mph and one at 10 mph. WATCO Companies, Inc., advises that all broken or damaged glazing will be replaced by FRA approved glazing material.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number, (*e.g.,* Docket Number FRA–2001–10593) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590. Communications received within 45 days from the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practical. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on January 2, 2002.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 02–314 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on August 16, 2001 [66 FR 43037–43039].

**DATES:** Comments must be submitted on or before February 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** Barbara Williams at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS–01), 202–366–4327. 400 Seventh Street, SW, Room 5319, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**National Highway Traffic Safety Administration**

*Title:* 49 CFR 552, Petitions for Rulemaking, Defects, and Noncompliance Orders.

*OMB Number:* 2127—0046.

*Type of Request:* Extension of a currently approved collection.

*Abstract:* 49 U.S.C. section 30162 specifies that any ''interested person may file a petition with the Secretary of Transportation requesting the Secretary to begin a proceeding'' to prescribe a motor vehicle safety standard under 49 U.S.C. chapter 301, or to decide whether to issue an order under 49 U.S.C. section 30118(b). 49 U.S.C. 30111 gives the Secretary authority to prescribe motor vehicle safety standards. 49 U.S.C. section 30118(b) gives the Secretary authority to issue an order to a manufacturer to notify vehicle or equipment owners, purchasers, and dealers of the defect or noncompliance and to remedy the defect or noncompliance.

Section 30162 further specifies that all petitions filed under its authority shall set forth the facts, which it is claimed establish that an order is necessary and briefly describe the order the Secretary should issue.

*Affected Public:* Business or other-for-profit.

*Estimated Total Annual Burden:* 20.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

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

**Delmas Johnson,**

*Acting Associate Administrator for Administration.*

[FR Doc. 02–305 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on August 16, 2001 [66 FR 43037–43039].

**DATES:** Comments must be submitted on or before February 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** Jonathan White at the National Highway Traffic Safety Administration, Office of Defects & Recall Information Analysis (NSA–11), 202–366–5227. 400 Seventh Street, SW, Room 5319, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**National Highway Traffic Safety Administration**

*Title:* 49 CFR part 557, Petitions for Hearings on Notification and Remedy of Defects.

*OMB Number:* 2127–0039.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* NHTSA's statutory authority at 49 U.S.C. sections 30118(e) and 30120(e) specifies that ''on petition of any interested person,'' NHTSA may hold hearings to determine whether a manufacturer of motor vehicles or motor vehicle equipment has met its obligation to notify owners, purchasers, and dealers of vehicles or equipment of a defect or noncompliance and to remedy a defect or noncompliance for Federal Motor Vehicle Safety Standards for some of the products the manufacturer produces.

To address these areas, NHTSA has promulgated 49 CFR part 557, Petitions for Hearings on Notification and Remedy of Defects, which adopts a uniform regulation that establishes procedures to provide for submission and disposition of petitions, and to hold hearings on the issue of whether the manufacturer has met its obligation to notify owners, distributors, and dealers of safety related defects or noncompliance and to remedy the problems by repair, repurchase, or replacement.

*Affected Public:* Business or other-for-profit, individuals or households.

*Estimated Total Annual Burden:* 21.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

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

**Delmas Johnson,**

*Acting Associate Administrator for Administration.*

[FR Doc. 02–306 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on August 16, 2001 [66 FR 43037–43039].

**DATES:** Comments must be submitted on or before February 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** Jonathan White at the National Highway Traffic Safety Administration, Office of Defects & Recall Information Analysis (NSA–11), 202–366–5226. 400 Seventh Street, SW, Room 5319, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

### National Highway Traffic Safety Administration

*Title:* 49 CFR Part 576, Record Retention.

*OMB Number:* 2127–0042.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* Under 49 U.S.C. 30166(e), NHTSA ''reasonably may require a manufacturer of a motor vehicle or motor vehicle equipment to keep records, and a manufacturer, distributor, or dealer to make reports, to enable (NHTSA) to decide whether the manufacturer, distributor or dealer has complied or is complying with this chapter or a regulation prescribed under this chapter.''

49 U.S.C. 30118(c) requires manufacturers to notify NHTSA and owners, purchasers, and dealers if the manufacturer (1) ''learns'' that any vehicle or equipment manufactured by it contains a defect and decides in good faith that the defect relates to motor vehicle safety, or (2) ''decides in good faith'' that the vehicle or equipment does not comply with an applicable Federal motor vehicle safety standard. The only way for the agency to decide if and when a manufacturer ''learned'' of a safety-related defect or ''decided in good faith'' that some products did not comply with an applicable Federal motor vehicle safety standard is for the agency to have access to the information available to the manufacturer.

*Affected Public:* Business or other-for-profit, individuals or households.

*Estimated Total Annual Burden:* 40,000.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

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

**Delmas Johnson,**

*Acting Associate Administrator for Administration.*

[FR Doc. 02–307 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–290 (Sub–No. 219X)]**

### 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 2.23-mile line of railroad between milepost HS–0.0 at Oakwood and milepost HS–2.23 at Mills, in Buchanan County, VA. The line traverses United States Postal Service Zip Code 24631.

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 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 February 6, 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 17, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 28, 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 11, 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 January 7, 2003, 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 Web site at *www.stb.dot.gov.*

Decided: December 27, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 02–103 Filed 1–4–02; 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 the filing fee, which currently is set at $1,000. *See* 49 CFR 1002.2(f)(25).

## DEPARTMENT OF THE TREASURY

### Customs Service

### Extension of General Program Test Regarding Post Entry Amendment Processing

**AGENCY:** Customs Service, Treasury.

**ACTION:** General notice.

**SUMMARY:** This document announces that the general program test regarding post entry amendment processing is being extended for a period of one year. The test will continue to operate in accordance with the notice published in the **Federal Register** on November 28, 2000.

**DATES:** The test allowing post entry amendment to entry summaries is extended to December 31, 2002.

**FOR FURTHER INFORMATION CONTACT:** Bruce Ingalls, Chief, Entry and Drawback Management Branch, Office of Field Operations (202/927–1082).

**SUPPLEMENTARY INFORMATION:** Customs announced and explained the post entry amendment processing test in a general notice document published in the **Federal Register** (65 FR 70872) on November 28, 2000. That notice announced that the test would commence no earlier than December 28, 2000, and run for approximately one year. In fact, the test is scheduled to operate through December 31, 2001.

Briefly, the test allows importers to amend entry summaries (not informal entries) prior to liquidation by filing with Customs either an individual amendment letter upon discovery of an error or a quarterly tracking report covering any errors that occurred during the quarter. The previously published general notice explained how to file post entry amendments for revenue related errors and non-revenue related errors, and the consequences of misconduct by importers during the test. It also provided that there are no application procedures or eligibility requirements. This document announces that the test is being extended to December 31, 2002. To participate in the test, an importer need only follow the procedure set forth in the previously published general notice.

Comments received in response to the previously published general notice have been reviewed and the test is being evaluated. Changes to the test based on the comments and the evaluation will be announced in the **Federal Register** in due course. The test may be further extended if warranted. Additional information on the post entry amendment procedure can be found under ''Importing and Exporting'' at *http://www.customs.gov.*

Dated: December 31, 2001.

**Bonni G. Tischler,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. 02–288 Filed 1–4–02; 8:45 am]

**BILLING CODE 4820–02–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Proposed Collection; Comment Request for Cuban Remittance Affidavit

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of

Foreign Assets Control (''OFAC'') within the Department of the Treasury is soliciting comments concerning OFAC's Cuban Remittance Affidavit information collection.

**DATES:** Written comments should be received on or before March 8, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to David W. Mills, Chief, Policy Planning & Program Management Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information about the filings or procedures should be directed to David W. Mills, Chief, Policy Planning & Program Management Division, Office of Foreign Assets Control, or Barbara C. Hammerle, Chief Counsel (Foreign Assets Control), Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:**

*Title:* Cuban Remittance Affidavit.

*OMB Number:* 1505–0167.

*Abstract:* The information is required of persons subject to the jurisdiction of the United States who make remittance to persons in Cuba pursuant to § 515.570 of the Cuban Assets Controls, 31 CFR part 515. The information will be used by the Office of Foreign Assets Control of the Department of the Treasury (''OFAC'') to monitor compliance with regulations governing family and emigration remittance.

*Current Actions:* There are no changes being made to the notice at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 1,000,000 filers per quarter, each filing four times a year.

*Estimated Time Per Respondents:* 60 seconds per form, with four filed annually per person.

*Estimated Total Annual Burden Hours:* 66,667, assuming each filer files four times a year.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget (''OMB'') control number. Books or records relating to a collection of information must be retained for five years.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

Approved: December 28, 2001.

**David W. Mills,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. 02–290 Filed 1–4–02; 8:45 am]

**BILLING CODE 4810–25–M**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Proposed Collection; Comment Request for Travel Service Provider and Carrier Service Provider Submission

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice and request for comments

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Foreign Assets Control (''OFAC'') within the Department of the Treasury is soliciting comments concerning OFAC's Travel Service Provider and Carrier Service Provider information collection.

**DATES:** Written comments should be received on or before March 8, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to David W. Mills, Chief, Policy Planning and Program Management Division, Office of Foreign Assets Control, department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information about the filings or procedures should be directed to David W. Mills, Chief, Policy Planning & Program Management Division, Office of Foreign Assets Control, or Barbara C. Hammerle, Chief Counsel (Foreign Assets Control), Department of the Treasury, 1500 Pennsylvania Avenue, NW., 1500 Pennsylvania Avenue, Annex—2d Floor, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:**

*Title:* Travel Service Provider and Carrier Service Provider Submission.

*OMB Number:* 1505–0168.

*Abstract:* The information is required of persons who have been authorized by the Office of Foreign Assets Control of the Department of the Treasury (''OFAC'') to handle travel arrangements to, from, and or within Cuba or to provide charter air service to Cuba. Travel service providers are required to collect information on persons traveling on direct flights to Cuba and forward that information to carrier service providers, for ultimate submission to OFAC.

*Current Actions:* There are no changes being made to the notice at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households and businesses.

*Estimated Number of Respondents:* 228,000.

*Estimated Time Per Respondent:* 5 minutes per entry for travel service providers, or up to 570,000 minutes annually for travel service providers in the aggregate (9,500 hours); and up to 5 minutes per entry for carrier service providers, or up to 570,000 entries annually for carrier service providers in the aggregate (9,500 hours).

*Estimated Total Annual Burden Hours:* 19,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget (''OMB'') control number. Books or records relating to a collection of information must be retained for five years.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 28, 2001.

**David W. Mills,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. 02–291 Filed 1–4–02; 8:45 am]

**BILLING CODE 4810–25–M**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Proposed Collection; Comment Request for Registration of Libyan Travel

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of is continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Foreign Assets Control (''OFAC'') within the Department of the Treasury is soliciting comments concerning OFAC's Libyan travel information collection. *See,* 31 CFR 550.560.

**DATES:** Written comments should be received on or before March 8, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to David W. Mills, Chief, Policy Planning & Program Management Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Annex—2d Floor, Washington, D.C. 20220.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information about the filing or procedures should be directed to David W. Mills, Chief, Policy Planning & Program Management Division, Office of Foreign Assets Control, or Barbara C. Hammerle, Chief Counsel (Foreign Assets Control), Department of the Treasury, 1500 Pennsylvania Avenue, N.W., 1500 Pennsylvania Avenue, Annex—2d Floor, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:**

*Title:* Travel to Libya by Immediate Family members of Libyan Nationals.

*OMB Number:* 1505–0092.

*Abstract:* The information must be filed by United States persons with the Licensing Division of the Office of Foreign Assets Control of the department of the Treasury ('OFAC'') or with the Belgian Embassy in Tripoli, Libya, with respect to their eligibility to travel to and reside in Libya pursuant to the provision of § 550.560 of the Libyan Sanctions Regulations, 31 CFR part 550.

*Current Actions:* There are no changes being made to the notice at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 5.

*Estimated Time Per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 5.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget (''OMB'') control number. Books or records relating to a collection of information must be retained for five years. However, respondent's are not required to maintain any documents but the data is of a type ordinarily retained (birth certificate, naturalization certificate, U.S. passport number).

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

Approved: December 28, 2001.

**David W. Mills,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. 02–292 Filed 1–4–02; 8:45 am]

**BILLING CODE 4810–25–M**

# Notices

Federal Register
Vol. 67, No. 4
Monday, January 7, 2002

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.

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Meeting

**AGENCY:** U.S. Commission on Civil Rights.

**DATE AND TIME:** Friday, January 11, 2002, 8:30 a.m.

**PLACE:** The location of this event has been changed. The new address is the U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

**STATUS:** Open to the public.

*Agenda*

I. Approval of Agenda
II. Approval of Minutes of December 7, 2001 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Commission Appointments for District of Columbia, Maryland, Virginia and West Virginia
VI. Future Agenda Items
9:30 a.m.—Document Production Hearing for the Education Accountability Project
10:00 a.m.—Environmental Justice Hearing

**Debra A. Carr,**
*Deputy General Counsel.*
[FR Doc. 02–389 Filed 1–3–02; 10:53 am]
**BILLING CODE 6335–01–M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–831]**

### Fresh Garlic From the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews

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

**ACTION:** Notice of initiation of new shipper antidumping duty reviews.

**SUMMARY:** The Department of Commerce has received requests to conduct three new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(d), we are initiating these new shipper reviews.

**EFFECTIVE DATE:** January 7, 2002.

**FOR FURTHER INFORMATION CONTACT:** Edythe Artman or Dunyako Ahmadu, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3931 or (202) 482–0198, 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 references are made to the Department of Commerce's (the Department) regulations at 19 CFR part 351 (2001).

**Background**

On November 29, 2001, the Department received a request for a new shipper review from Shandong Heze International Trade and Developing Company (Shandong Heze). On November 30, 2001, we received requests for new shipper reviews from Jinan Yipin Corporation, Ltd. (Jinan Yipin) and Huaiyang Hongda Dehydrated Vegetable Company (Hongda). All three companies are Chinese producers and exporters of fresh garlic from the People's Republic of China. We have reviewed their requests and find that they comply with the content requirements for requests set forth under 19 CFR 351.214(b)(2). The period of review is November 1, 2000, through October 31, 2001.

**Initiation of Review**

Pursuant to 19 CFR 351.214(b)(2)(i), Shandong Heze, Jinan Yipin, and Hongda provided certifications that they had not exported subject merchandise to the United States during the period of investigation. In accordance with 19 CFR 351.214(b)(2)(iii)(A), each company further certified that, since the initiation of the original investigation, it has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the period of investigation, including those not individually examined during the investigation.

Also, as required by 19 CFR 351.214(b)(2)(iii)(B), each of the three companies certified that its export activities were not controlled by the central government. Thus, the requests from Shandong Heze, Jinan Yipin, and Hongda meet the content requirements set forth under 19 CFR 351.214(b)(2)(i) and (iii). In addition, the companies submitted documentation establishing the following: (1) the date on which their subject merchandise was first entered, or withdrawn from warehouse, for consumption or the date on which the exporter or producer first shipped the subject merchandise for export to the United States; (ii) the volume of that shipment; and (iii) the date of the first sale to an unaffiliated customer in the United States. Thus, the requests for review meet the content requirements set forth under 19 CFR 351.214(b)(2)(iv). Accordingly, pursuant to section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating new shipper reviews for shipments of fresh garlic from the People's Republic of China produced and exported by Shandong Heze, Jinan Yipin, and Hongda. The period of review covers the period November 1, 2000, through October 31, 2001. *See* 19 CFR 351.214(g). We intend to issue final results of this review no later than 270 days after the day on which these new shipper reviews are initiated. *See* 19 CFR 351.214(i).

Concurrent with publication of this notice and in accordance with 19 CFR 351.214(e), we will instruct the Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by Shandong Heze, Jinan Yipin, and Hongda until the completion of the review.

The interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B)(ii)

of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: December 28, 2001.

**Richard W. Moreland,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 02–317 Filed 1–4–02; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

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

**ACTION:** Publication of annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

**SUMMARY:** The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period October 1, 2000 through September 30, 2001. We are publishing the current listing of those subsidies that we have determined exist.

**EFFECTIVE DATE:** January 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Tipten Troidl, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–2786.

**SUPPLEMENTARY INFORMATION:** Section 702(a) of the Trade Agreements Act of 1979 (as amended) (''the Act'') requires the Department of Commerce (''the Department'') to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(g)(b)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's annual list of subsidies on articles of cheese that were imported during the period October 1, 2000 through September 30, 2001.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(g)(b)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: December 28, 2001.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

APPENDIX.—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

| Country | Program(s) | Gross [1] Subsidy ($/lb) | Net [2] Subsidy ($/lb) |
|---|---|---|---|
| Austria | European Union Restitution Payments | 0.12 | 0.12 |
| Belgium | EU Restitution Payments | 0.02 | 0.02 |
| Canada | Export Assistance on Certain Types of Cheese | 0.23 | 0.23 |
| Denmark | EU Restitution Payments | 0.06 | 0.06 |
| Finland | EU Restitution Payments | 0.14 | 0.14 |
| France | EU Restitution Payments | 0.09 | 0.09 |
| Germany | EU Restitution Payments | 0.09 | 0.09 |
| Greece | EU Restitution Payments | 0.00 | 0.00 |
| Ireland | EU Restitution Payments | 0.07 | 0.07 |
| Italy | EU Restitution Payments | 0.00 | 0.00 |
| Luxembourg | EU Restitution Payments | 0.07 | 0.07 |
| Netherlands | EU Restitution Payments | 0.05 | 0.05 |
| Norway | Indirect (Milk) Subsidy | 0.27 | 0.27 |
| | Consumer Subsidy | 0.12 | 0.12 |
| Total | | 0.39 | 0.39 |
| Portugal | EU Restitution Payments | 0.04 | 0.04 |
| Spain | EU Restitution Payments | 0.04 | 0.04 |
| Switzerland | Deficiency Payments | 0.06 | 0.06 |
| U.K. | EU Restitution Payments | 0.05 | 0.05 |

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 02–318 Filed 1–4–02; 8:45 am]
BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Institute of Standards And Technology

### Manufacturing Extension Partnership National Advisory Board

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Manufacturing Extension Partnership National Advisory Board (MEPNAB), National Institute of Standards and Technology (NIST), will meet Thursday, January 17, 2002, from 8:00 a.m. to 3:30 p.m. The MEPNAB is composed of nine members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was established to fill a need for outside input on MEP. MEP is a unique program consisting of centers in all 50 states and Puerto Rico. The centers have been created by state, federal, and local partnerships. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. The purpose of this meeting is to hear about latest developments, status of plans for 2002 and the logic, background, progress and goals of the 360vu brand. There will also be a presentation on findings from a technology extension pilot partnering. Discussions scheduled to begin at 8:00 a.m. and to end at 9:30 a.m. and to begin at 2:30 p.m. and to end at 3:30 p.m. on January 17, 2002, on personnel issues and proprietary budget information will be closed.

**DATES:** The meeting will convene January 17, 2002 at 8:00 a.m. and will adjourn at 3:30 p.m. on January 17, 2002.

**ADDRESSES:** The meeting will be held in the Employees Lounge, Administration Building, at NIST, Gaithersburg, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Linda Acierto, Senior Policy Advisor, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, MD 20899–4800, telephone number (301) 975–5033.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration with the concurrence of the General Counsel formally determined on January 3, 2002, that portions of the meeting which involve discussion of proposed funding of the MEP may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because that portion will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of the meeting which involve discussion of the staffing of positions in MEP may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in that portion of the meeting is likely to reveal information of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: January 3, 2002.

**Karen H. Brown,**

*Deputy Director.*

[FR Doc. 02–428 Filed 1–4–02; 8:45 am]
BILLING CODE 3510–13–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 010202A]**

### Gulf of Mexico Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene public meetings.

**DATES:** The meetings will be held on January 21– 24, 2002.

**ADDRESSES:** These meetings will be held at the Holiday Inn Fort Brown, 1900 East Elizabeth Street, Brownsville, TX 78520; telephone: 956–546–2201. Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Wayne E. Swingle, Executive Director, telephone: 813–228–2815.

**SUPPLEMENTARY INFORMATION:**

**January 21**

8:30 a.m. thru 10:30 a.m.–Convene the Mackerel Management Committee to develop recommendations for mackerel and cobia status determination criteria. The full Council will consider these recommendations on Thursday morning.

10:30 a.m. thru 11:30 a.m.–Convene the Shrimp Management Committee to hear a NMFS report on the Texas closure analyses and make recommendation for the full Council for discussion on Thursday morning.

1 p.m. thru 5:30 p.m.–Convene the Reef Fish Management Committee to review a draft regulatory amendment containing alternatives for rebuilding of the red grouper stock and to hear the total allowable catch (TAC) recommendations of the scientific panels and Reef Fish Advisory Panel (AP) for gag, vermillion snapper, and gray triggerfish. The Committee will also discuss development of a red snapper individual transferable quota protocol.

**January 22**

8:30 a.m. thru 10:30 a.m.–Continue the Reef Fish Management Committee, if necessary.

10:30 a.m. thru 11:30 a.m.–Convene the Deep-Water Crab Management Committee to discuss an options paper for the development of a Deep-water Crab Fishery Management Plan (FMP). The species that would be managed under the Deep-water Crab FMP will be the golden crab (*Chaceon fenneri*) and red crab (*Chaceon quinquedens*). The preliminary issues and options paper for the development of a Deep-water Crab FMP examines fisheries issues including management needs, gear requirements and restrictions, crab size and sex limitations for harvest, and requirements for fishery participants.

1 p.m. thru 3:30 p.m.–Convene the Administrative Policy Committee to discuss congressional bills entitled the ''Fishery Recovery Act'' and ''Freedom to Fish Act.'' The Committee recommendations will be considered by the Council as recommendations for amending the Magnuson-Stevens Fishery Conservation & Management Act (Magnuson Stevens Act).

3:30 p.m. thru 4:30 p.m.–(Closed Session) Convene the AP Selection Committee to recommend members for two Ad Hoc panels to review preparation of a supplemental environmental impact statement (SEIS) for the Essential Fish Habitat (EFH) Amendment. 4:30 p.m. thru 5:30 p.m.–(Closed Session) Convene the Personnel Committee to consider revisions to the personnel section of the Administrative Handbook.

**January 23**

8:30 a.m.–Convene Council.

8:45 a.m. thru 12 noon–Receive public testimony on the Texas closure, overfishing and overfished criteria for mackerel and cobia, and TAC recommendations for gag grouper, vermillion snapper, and gray triggerfish. Although the Council will hear public testimony on TAC for these three stocks, final action on gag will not be taken until the March Council meeting in Mobile, AL or the May Council meeting in Destin, FL. Final action on gray triggerfish will be taken at the March Council meeting in Mobile, AL.

1:30 p.m. thru 5:30 p.m.–Receive the report of the Reef Fish Management Committee.

5 p.m. thru 5:30 p.m.–(Closed Session) Receive a report of the AP Selection Committee.

5:30 p.m. thru 5:45 p.m.–(Closed Session) Receive a report of the Personnel Committee. January 24

8:30 a.m. thru 8:45 a.m.–Receive a report of the AP Selection Committee.

8:45 a.m. thru 9:30 a.m.–Receive a report of the Mackerel Management Committee.

9:30 a.m. thru 9:45 a.m.–Receive a report of the Shrimp Management Committee.

9:45 a.m. thru 10:15 a.m.–Receive a report of the Deep-Water Crab Management Committee.

10:15 a.m. thru 12 noon–Receive a report of the Administrative Policy Committee.

1:30 p.m. thru 2:30 p.m.–Receive a status report on contract for preparation of SEIS for the EFH Amendment.

2:30 p.m. thru 2:45 p.m.–Receive a report of the Coral Reef Task Team Meeting.

2:45 p.m. thru 3 p.m.–Receive a report on the Gulf and South Atlantic Fishery Foundation turtle excluder device workshop.

3 p.m. thru 3:30 p.m.–Receive Enforcement Reports.

3:30 p.m. thru 3:45 p.m.–Receive the NMFS Regional Administrator's Report.

3:45 p.m. thru 4 p.m.–Receive Director's Reports.

4 p.m. thru 4:15 p.m.–Other Business

Although non-emergency issues not contained in the agenda may come before the Council for discussion, in accordance with the Magnuson Stevens Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. A copy of the Committee schedule and agenda can be obtained by calling 813 228–2815.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by January 14, 2002.

Dated: January 2, 2002.

**Richard W. Surdi,**

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

[FR Doc. 02–319 Filed 1–4–02; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF ENERGY

### Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

**AGENCY:** Office of Environmental Management, Department of Energy.

**ACTION:** Notice of the acceptance of claims and the availability of funds for reimbursement in fiscal year (FY) 2002.

**SUMMARY:** This Notice announces the Department of Energy (DOE) acceptance of FY 2002 claims for reimbursement under Title X of the Energy Policy Act of 1992. Approximately $19.5 million in funds for FY 2002 are available for reimbursement of certain costs of remedial action at eligible active uranium and thorium processing sites pursuant to Title X of the Energy Policy Act of 1992. This amount includes $1 million in FY 2002 appropriations plus approximately $18.5 million available from FY 2001 appropriations. The Department expects to make payments on approved FY 2001 claims from these appropriations by April 30, 2002.

**DATES:** The closing date for the submission of claims in FY 2002 is May 1, 2002. These claims will be processed for payment by April 30, 2003, based on the availability of funds from congressional appropriations.

**ADDRESSES:** Claims should be forwarded by certified or registered mail, return receipt requested, to the U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division, P.O. Box 5400, Albuquerque, NM 87185–5400, or by express mail to the U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division, H and Pennsylvania Streets, Albuquerque, NM 87116. All claims should be addressed to the attention of Mr. Gilbert Maldonado. Two copies of the claim should be included with each submission.

**FOR FURTHER INFORMATION CONTACT:** Gilbert Maldonado at (505) 845–4035 of the U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division.

**SUPPLEMENTARY INFORMATION:** DOE published a final rule under 10 CFR part 765 in the **Federal Register** on May 23, 1994, (59 FR 26714) to carry out the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. Title X requires DOE to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as determined by DOE in accordance with 10 CFR part 765. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

**Authority:** Section 1001–1004 of Public Law 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

Issued in Washington, DC, on this 18th of December, 2001.

**David E. Mathes,**

*Team Leader, Albuquerque/Nevada Team, Small Sites Closure Office, Office of Site Closure.*

[FR Doc. 02–287 Filed 1–4–02; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Advanced Liquid Natural Gas (LNG) Onboard Storage Systems

**AGENCY:** Chicago Operations Office, DOE.

**ACTION:** Notice of intent to issue a financial assistance solicitation.

**SUMMARY:** DOE intends to issue a financial assistance solicitation in February 2002 for research and development in the area of Advanced Liquid Natural Gas (LNG) Onboard Storage Systems. The long-term goal is to demonstrate cryogenic tank and pump systems that have commercial potential. The short-term goal is to validate cryogenic pumping design concepts through a laboratory proof-of-concept test program. The scope of work for the solicitation will be in two phases. Phase I activities will involve the ''proof of concept'' through a validation test program. Tasks under this phase will cover: construction of a test stand; fabrication of test items; component testing; pilot testing of a complete fuel delivery system; redesign and optimization; and prototype testing. Phase II activities will involve tank certification testing and road testing. (Phase II funding will be based on availability of funds, test data, design and market plan.) It is anticipated that these efforts will take place over a twenty-four month period under a cooperative agreement arrangement. One or two cooperative agreements will result from the solicitation. Total Government funding is expected to be approximately $1,000,000.00. Successful applicants are expected to cost-share a minimum of 30% of the project cost. Technical program requirements include (1) low-pressure (15 psig or less) on-board storage, and (2) a no-vent system, both on station refuel and fuel delivery to the engine. It is anticipated that award(s) as a result of the solicitation will be made in July, 2002. It is further anticipated that Phase II funding for this project will be available in the FY 2003 budget.

**DATES:** The solicitation will be available on DOE's ''Industry Interactive Procurement System'' (IIPS) Web page located at *http://e-center.doe.gov* on or about February 15, 2002. Prospective applicants can obtain access to the solicitation from the above Internet address or through the DOE Chicago Operations Office (CH) Internet address at *http://www.ch.doe.gov* under ''current solicitations''. The deadline for the submission of applications will be identified in the solicitation.

**ADDRESSES:** The solicitation, when issued, will include a narrative statement of work, program requirements, qualification criteria, evaluation criteria, and other information. The solicitation and any subsequent amendments will be published on the above mentioned Internet addresses. All applications must be submitted through IIPS in accordance with the instructions provided in the solicitation.

**FOR FURTHER INFORMATION CONTACT:** Sharon L. Donaldson, 630/252–0953.

**SUPPLEMENTARY INFORMATION:** An Advanced LNG Storage System incorporates the use of a fuel pump. LNG fuel pumps are currently being used on high-pressure (3600 psig) direct injected natural gas engines. There are, however, advantages to using LNG pumps for all types of engines, since 25% more natural gas can be stored in a tank when fuel tank saturation pressure is below 15 psig. The lower pressure of the vehicle's storage tank also helps standardize and simplify the operation of the natural gas refueling station. Operating at low pressures can also reduce venting losses and may offer savings in equipment costs. The major obstacle to low-pressure onboard storage is the availability of a highly reliable in-tank LNG pump. DOE, therefore, has interest in an R&D test program that further develops low-pressure onboard LNG pumping capability. Interested parties will be required to address the following program requirements: type of refueling (either single line fill or two line fill); thermal/pressure tank management; fuel weathering; fuel delivery sufficient for a 425-hp engine; cryogenic pump durability and maintenance schedule; tank hold time; redundancy in case of pump failure; business plan; and safety. It is DOE's intent to evaluate submitted designs and business plans, and support the further testing of the most promising approaches. Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS HeIpDesk@e-center.doe.gov.* The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Issued: Argonne, Illinois on December 26, 2001.

**John D. Greenwood,**

*Assistant Manager for Acquisition and Assistance.*

[FR Doc. 02–281 Filed 1–4–02; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Science Financial Assistance Program Notice 02–03; Environmental Management Science Program (EMSP): Research Related to Subsurface Contamination in the Vadose and Saturated Zones

**AGENCY:** Department of Energy.

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Offices of Science (SC) and Environmental Management (EM), U.S. Department of Energy (DOE), hereby announce their interest in receiving grant applications to support specifically innovative, fundamental research to investigate DOE subsurface contamination in the vadose and saturated zones.

**DATES:** The deadline for receipt of formal applications is 4:30 P.M., E.S.T., Wednesday, March 27, 2002, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2002.

**ADDRESSES:** Applications must be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, Attn: Program Notice 02–03. This address must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant.

**FOR FURTHER INFORMATION CONTACT:** Dr. Roland F. Hirsch, SC–73, Mail Stop F–237, Medical Sciences Division, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–9009, facsimile: (301) 903–0567, e-mail: *roland.hirsch@science.doe.gov*, or Mr. Mark Gilbertson, Office of Science and Technology, Office of Environmental Management, 1000 Independence Avenue, SW, Washington, D.C. 20585, telephone: (202) 586–7150, facsimile: (202) 596–1492, e-mail: *mark.gilbertson@em.doe.gov.* The full text of Program Notice 02–03 is available via the Internet using the following Web site address: *http://*

*www.science.doe.gov/production/grants/grants.html.*

**SUPPLEMENTARY INFORMATION:** The Office of Environmental Management, in partnership with the Office of Science, sponsors the Environmental Management Science Program (EMSP) to fulfill DOE's continuing commitment to the cleanup of DOE's environmental legacy. The program was initiated in Fiscal Year 1996, to (1) address long-term technical issues crucial to the EM mission, and (2) provide EM with near-term fundamental data critical to the advancement of technologies that are under development, but not yet at full scale nor implemented. Proposed basic research under this notice should contribute to environmental management activities that would decrease risk for the public and workers, provide opportunities for major cost reductions, reduce time required to achieve EM's mission goals, and, in general, should address problems that are considered intractable without new knowledge.

This program is designed to inspire breakthroughs in areas critical to the EM mission through basic research and will be managed in partnership with SC. The Office of Science's procedures, as set forth in the Office of Science Merit Review System, as published in the **Federal Register**, March 11, 1991, Vol. 56, No. 47, pages 10244–10246, will be used for merit review of applications submitted in response to this notice.

Subsequent to the formal scientific merit review, applications that are judged to be scientifically meritorious will be evaluated by DOE for relevance to the objectives of the Environmental Management Science Program. Additional information can be obtained about the general program at: *http://emsp.em.doe.gov.*

**Purpose**

Over the past 50 years, the United States created an industrial complex to develop, test, manufacture, and maintain nuclear weapons for national security purposes. The production and testing of nuclear weapons created a legacy of significant environmental contamination, ranging from uranium mining and milling, waste disposal, and radionuclide migration in ground water and soil. In 1995, the 104th Congress authorized creation of the Environmental Management Science Program (EMSP) to develop a long term, basic science infrastructure to focus on the environmental cleanup effort DOE began formally in 1989. To address the largest environmental cleanup program in the world, from a cost perspective, EMSP has the following objectives:

- Provide scientific knowledge that will revolutionize technologies and cleanup approaches to significantly reduce future costs, schedules, and risks.
- ''Bridge the gap'' between broad fundamental research that has wide-ranging applicability, such as that performed in DOE's Office of Science and needs-driven applied technology development that is conducted in EM's Office of Science and Technology.
- Focus the Nation's science infrastructure on critical DOE environmental management problems.

Since 1996, the Program has held six competitions and has awarded over $290 million in funding to 361 research projects. A breakdown of the EMSP awards by year is as follows:

- 1996 and 1997: 202 awards totaling $160 million targeted at a broad spectrum of basic science cleanup and waste management issues.
- 1998: 33 awards totaling $30 million focused on high-level radioactive waste and decontamination and decommissioning issues.
- 1999: 39 awards totaling $30 million fostered basic research in the areas of vadose zone contamination and low dose radiation.
- 2000: 42 awards totaling $30 million in research renewals for 1996 and 1997 funded projects.
- 2001: 45 awards totaling $39 million focused on additional high-level radioactive waste and decontamination and decommissioning issues.

**Representative Research Areas**

Basic research is solicited in all areas of science with the potential for addressing problems in subsurface contamination and transport processes in the vadose and saturated zones. Processes and problems in the vadose zone constitute important subjects of concern to the Department's Environmental Management Program. Relevant scientific disciplines include, but are not limited to: geological sciences (including geochemistry, geophysics, hydrogeologic flow and transport modeling, process modeling, and hydrologic field-studies), plant sciences (including mechanisms of contaminant uptake, concentration, sequestration, and phytoremediation), chemical sciences(including fundamental interfacial chemistry, computational chemistry, actinide chemistry, and analytical chemistry and instrumentation), engineering sciences (including control systems and optimization, diagnostics, transport processes, fracture mechanics, and bioengineering), materials science (including other novel materials-related strategies), and bioremediation (including biogeochemistry; microbial science related to ex situ treatment of metals, radionuclides, and organics; and in situ treatment of organics). The Natural and Accelerated Bioremediation Research (NABIR) program in the Office of Biological and Environmental Research, Office of Science, may issue a Notice related to in situ treatment of metals and radionuclides during FY 2002. Research projects relating to this area should be submitted to NABIR rather than to EMSP. Additional information about the NABIR program can be found at: *http://www.lbl.gov/NABIR/.*

**Project Renewals**

Lead Principal Investigators of record for Projects funded under Office of Science Notice 99–06, Environmental Management Science Program: Research Related to Subsurface Contamination, are eligible to submit renewal applications under this solicitation.

**Program Funding**

It is anticipated that up to a total of $4,000,000 of Fiscal Year 2002, funds will be available for new and renewal EMSP awards resulting from this Notice. Multiple-year funding of grant awards is anticipated, contingent upon the availability of appropriated funds. Award sizes are expected to be on the order of $100,000–$300,000 per year for total project costs for a typical three-year grant. Collaborative projects involving several research groups or more than one institution may receive larger awards if merited. The program will be competitive and offered to investigators in universities or other institutions of higher education, other non-profit or for-profit organizations, non-Federal agencies or entities, or unaffiliated individuals. DOE reserves the right to fund in whole or part any or none of the applications received in response to this Notice. A parallel announcement with a similar potential total amount of funds will be issued to DOE Federally Funded Research and Development Centers (FFRDCs). All projects will be evaluated using the same criteria, regardless of the submitting institution. Additionally, relevant innovative basic research pertaining to other sites will be considered.

**Collaboration and Training**

Applicants to the EMSP are strongly encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and FFRDCs, including the DOE National

Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible.

Applicants are also encouraged to provide training opportunities, including student involvement, in applications submitted to EMSP.

**Application Format**

Applicants are expected to use the following format in addition to following instructions in the Office of Science Application Guide. Applications must be written in English, with all budgets in U.S. dollars.

- Office of Science Face Page (DOE F 4650.2 (10–91)).
- Application classification sheet (a plain sheet of paper with one selection from the list of scientific fields listed in the Application Categories Section).
- Table of Contents.
- Project Abstract (no more than one page).
- Budgets for each year and a summary budget page for the entire project period (using DOE F–4620.1).
- Budget Explanation. Applicants are requested to include in the travel budget funds to attend: (1) An initial research kick-off meeting; (2) for each year, to attend either the National EMSP Workshop, or a Focus Area-specific Mid-Year Review; and (3) one or more extended visits (1 to 2 weeks in duration) to a cleanup site by either the Principal Investigator, or a senior staff member, or collaborator.
- Budgets and Budget explanation for each collaborative subproject, if any.
- Project Narrative (recommended length is no more than 20 pages; multi-investigator collaborative projects may use more pages if necessary up to a total of 40 pages).
- Goals.
- Significance of Project to the EM Mission.
- Background.
- Research Plan.
- Preliminary Studies (if applicable).
- Research Design and Methodologies.
- Literature Cited.
- Collaborative Arrangements (if applicable).
- Biographical Sketches (limit 2 pages per senior investigator).
- Description of Facilities and Resources.
- Current and Pending Support for each senior investigator.

**Application Categories**

In order to properly classify each application for evaluation and review, the documents must indicate the applicant's preferred scientific research field, selected from the following list.

Field of Scientific Research:

1. Actinide Chemistry.
2. Analytical Chemistry and Instrumentation.
3. Bioremediation.
4. Engineering Sciences.
5. Geochemistry.
6. Geophysics.
7. Hydrogeology.
8. Interfacial Chemistry.
9. Materials Science.
10. Plant Science.
11. Other.

**Application Evaluation and Selection**

*Scientific Merit*

The program will support the most scientifically meritorious and relevant work, regardless of the institution. Formal applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d).

1. Scientific and/or Technical Merit of the Project.
2. Appropriateness of the Proposed Method or Approach.
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources.
4. Reasonableness and Appropriateness of the Proposed Budget.

External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

**Relevance to Mission**

Researchers are encouraged to demonstrate a linkage between their research projects and significant contamination problems at DOE sites. Researchers can establish this linkage in a variety of ways, for example, by elucidating the scientific problems to be addressed by the proposed research and explaining how the solution of these problems could improve remediation capabilities. Of course, given the nature of basic research, there will not always be a clear pathway between research results and application to site remediation.

Subsequent to the formal scientific merit review, applications which are judged to be scientifically meritorious will be evaluated by DOE for relevance to the objectives of EMSP. DOE shall also consider, as part of the evaluation, program policy factors such as an appropriate balance among the program areas, including research already in progress. Past research solicitations, abstracts, and research reports of projects funded under EMSP can be viewed at: *http://emsp.em.doe.gov/researcher.htm.*

**Application Guide and Forms**

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is made.

**Subsurface Contamination Research Needs**

This research Notice has been developed for Fiscal Year 2002, with the primary objective of providing continuity in scientific knowledge that will revolutionize technologies and clean-up approaches for solving DOE's most complex environmental problems. An overview of EMSP vadose and saturated zone research needs is summarized in this section based on the National Academy of Sciences, National Research Council (NRC) report published in 2000 titled ''Research Needs in Subsurface Science.'' NRC recommendations for basic research focus in four areas:

- Location and characterization of subsurface contaminants and characterization of the subsurface.
- Conceptual modeling.
- Containment and stabilization.
- Monitoring and validation.

More detailed explanations of the nature and extent of environmental contamination throughout the DOE Complex, particularly at the six largest Field Offices, and reference web sites, can be found in the background section of this Notice. Interested investigators are referred to three web sites that provide information regarding subsurface contamination across the DOE Complex:

- Subsurface Contamination Focus Area (SCFA) at: *http://www.envnet.org/scfa/* provides new science technologies, approaches, and technical assistance to address soil and water pollution, reducing the risk and cost of cleanup and stewardship. Researchers are invited to review the SCFA Product Lines and Technical Targets; the later is

under development to strategically guide research and technology products to end-users. A few of the critical research areas included in the Technical Targets are: characterizing and monitoring the lateral and vertical extent of dense nonaqueous phase liquids (DNAPLs) transport; reactive materials for barrier systems that maintain permeability over time; biogeochemical processes leading to the mobilization/immobilization of the contaminants in soils and sediments, as well as the those factors controlling their bioavailability; and monitored natural attenuation processes and validation strategies.

• Idaho National Engineering and Environmental Laboratory lead an effort to develop a National Roadmap for Vadose Zone Science and Technology described at: *http://www.inel.gov/vadosezone/* to improve vadose zone characterization and to monitor and simulate subsurface contamination fate and transport, integrating the saturated zone.

• Idaho National Engineering and Environmental Laboratory's (INEEL) role as EM's Lead Lab is to ensure the integration of critical new science, technology, and programmatic solutions for cleanup and long term stewardship, described at: *http://www.inel.gov/environment/em-lead.shtml.*

There are about 6.4 billion cubic meters of contaminated soil, groundwater, and other environmental media at the DOE sites. Contaminants of concern across the Complex broadly include: radionuclides, metals, and dense nonaqueous phase liquids (DNAPLs). More specifically, key chemicals by group are:

• Radionuclides: plutonium, strontium–90, cesium–137, isotopes of uranium, trituim, thorium, technecium–99, radium, and iodine–129.

• Metals: lead, chromium VI, mercury, zinc, beryllium, arsenic, cadmium, and copper.

• DNAPLs: carbon tetrachloride, trichloroethylene, dichloroethylene, tetrachloroethylene, chloroform, dichloromethane, and polychlorinated biphenyls.

The life cycle costs for the Office of Environmental Management cleanup program have been estimated to be $147 billion between 1997 and 2070 (DOE 1998a). During this period of time, the EMSP research results can make a significant impact on reducing risks, costs, and cleanup schedules.

Details of the programs of the Office of Environmental Management and the technologies currently under development or in use by the Environmental Management Program can be found at: *http://www.em.doe.gov* and at the extensive links contained therein. The programs and technologies should be used to obtain a better understanding of the missions and challenges in environmental management in DOE when considering areas of research to be proposed.

*Location and Characterization of Subsurface Contaminants and Characterization of the Subsurface*

The challenges of locating and characterizing subsurface contamination are magnified by the wide range of contaminant types; the wide variety of geological and hydrological conditions across the DOE complex; and the wide range of spatial resolutions at which this contamination must be located and characterized, from widely dispersed contamination in groundwater plumes to small isolated hot spots in waste burial grounds. Basic research is needed to support the development of the following capabilities to locate and characterize contamination in the subsurface and to characterize subsurface properties at the scales that control contaminant fate and transport behavior:

• Improved capabilities for characterizing the physical, chemical, and biological properties of the subsurface.

• Improved capabilities for characterizing physical, chemical, and biological heterogeneity, especially at the scales that control contaminant fate and transport behavior. Approaches that allow the identification and measurement of the heterogeneity features that control contaminant fate and transport to be obtained directly (i.e., without having to perform a detailed characterization of the subsurface) are especially needed.

• Improved capabilities for measuring contaminant migration and system properties that control contaminant movement.

• Methods to integrate data collected at different spatial and temporal scales to better estimate contaminant and subsurface properties and processes.

• Methods to integrate such data into conceptual models.

*Conceptual Modeling*

Existing conceptual and predictive models have often proven ineffective for understanding and predicting contaminant movement, especially at sites that have thick vadose (unsaturated) zones or complex subsurface characteristics. Accurate conceptualizations are essential for understanding the long-term fate of contaminants in the subsurface and the selection and application of appropriate corrective actions. Basic research explicitly focused on fundamental approaches and assumptions underlying conceptual model development could produce a toolbox of methodologies that are applicable to contaminated sites both inside and outside the DOE complex. This research should focus on the following topics:

• New observational and experimental approaches and tools for developing conceptual models that apply to complex subsurface environments, including such phenomena as colloidal transport and biologic activity.

• New approaches for incorporating geological, hydrological, chemical, and biological subsurface heterogeneity into conceptual model formulations at scales that dominate flow and transport behavior.

• Development of coupled-process models through experimental studies at variable scales and complexities that account for the interacting physical, chemical, and biological processes that govern contaminant fate and transport behavior.

• Methods to integrate process knowledge from small-scale tests and observations into model formulations, including methods for incorporating qualitative geological information from surface and near-surface observations into conceptual model formulations.

• Methods to measure and predict the scale dependency of parameter values.

• Approaches for establishing bounds on the accuracy of parameters and conceptual model estimates from field and experimental data.

The research needs outlined above call for more hypothesis-driven experimental approaches that address how to integrate the understanding of system behavior. This research will require expertise from a wide range of disciplines and must be conducted at scales ranging from the laboratory bench top to contaminated field sites. Moreover, to have long-term relevance to the DOE cleanup mission, this research must be focused on the kinds of subsurface environments and contamination problems commonly encountered at major DOE sites.

*Containment and Stabilization*

There has been an increasing emphasis on, and acceptance of, waste containment and stabilization in recent years, both in DOE and by regulatory agencies. Decreasing cleanup budgets, evaluations that show containment is a low-risk choice for some problems, and recognition that some contamination cannot be remediated either with

current technologies or conceivable new technologies are responsible for this change in philosophy. However, at some sites, containment and stabilization may be an interim measure and has its own set of associated technical problems. There is little understanding of the long-term performance of containment and stabilization systems, and there is a general absence of robust and cost-effective methods to validate that such systems are installed properly or that they can provide effective long-term protection.

The construction of stabilization and containment systems is properly within the province of applied technology development. However, basic research focused on the following topics will be needed to support this technology development effort:

- The mechanisms and kinetics of chemically and biologically mediated reactions that can be applied to new stabilization and containment approaches (e.g., reactions that can extend the use of reactive barriers to a greater range of contaminant types found at DOE sites) or that can be used to understand the long-term reversibility of chemical and biological stabilization methods.
- The physical, chemical, and biological reactions that occur among contaminants, soils, and barrier components so that more compatible and durable materials for containment and stabilization systems can be developed.
- The fluid transport behavior in conventional barrier systems, for example, understanding water infiltration into layered systems, including infiltration under partially saturated conditions and under the influences of capillary, chemical, electrical, and thermal gradients can be used to support the design of more effective infiltration barrier systems.
- The development of methods for assessing the long-term durability of containment and stabilization systems.

*Monitoring and Validation*

Monitoring and validation are necessary at both the front and the back ends of the site remediation process. At the front end, monitoring and validation are used to support the development of conceptual and predictive models of subsurface and contaminant behavior. At the back end, monitoring and validation are used to demonstrate the effectiveness of efforts to remove, treat, or especially to contain contamination and to gain regulatory acceptance for such corrective actions. Moreover, such monitoring and validation efforts can also improve the understanding of the contaminant fate and transport processes and can be used to recalibrate and revise conceptual and predictive models-important elements of the model building process.

The ability to monitor and validate is essential to the successful application of any corrective action to a subsurface contamination problem and regulatory acceptance of that action. However, the knowledge and technology bases to support these activities are not fully developed and are receiving little attention in EM's science and technology programs.

Many of the research opportunities for monitoring and validation have been covered in the research emphases discussed above. Basic research is needed on the following topics:

- Development of methods for designing monitoring systems to detect both current conditions and changes in system behaviors. These methods may involve the application of conceptual, mathematical, and statistical models to determine the types and locations of observation systems and prediction of the spatial and temporal resolutions at which observations need to be made.
- Development of validation processes. The research questions include (1) understanding what a representation of system behavior means and how to judge when a model provides an accurate representation of a system behavior—the model may give the right answers for the wrong reasons and thus may not be a good predictive tool; and (2) how to validate the future performance of the model or system behavior based on present-day measurements.
- Data for model validation. Determining the key measurements that are required to validate models and system behaviors, the spatial and temporal resolutions at which such measurements must be obtained, and the extent to which surrogate data (e.g., data from lab-scale testing facilities) can be used in validation efforts.
- Research to support the development of methods to monitor fluid and gaseous fluxes through the unsaturated zone, and for differentiating diurnal and seasonal changes from longer-term secular changes. These methods may involve both direct (e.g., in situ sensors) and indirect (e.g., using plants and animals) measurements over long time periods, particularly for harsh chemical environments characteristic of some DOE sites. This research should support the development of both the physical instrumentation and measurement techniques. The latter includes measurement strategies and data analysis (including statistical) approaches.

**Background**

The DOE has a 50-year legacy of environmental problems resulting from the production of nuclear weapons. Migration of some groundwater plumes threaten local and regional water sources, and in some cases, have adversely impacted off-site resources. The Department is responsible for the remediation of numerous landfills at facilities. These landfills are estimated to contain over three million cubic meters of radioactive and hazardous buried waste, some of which has migrated to the surrounding soils and groundwater. Currently available cleanup technologies are inadequate or unacceptable due to excessive costs, increased risks, long schedules, or the production of secondary waste streams.

Much of the defense-related contamination within the Department (the Complex has over 100 sites) occurs at six of the largest sites, as summarized below: Hanford, Washington; Idaho National Engineering and Environmental Laboratory (INEEL); Nevada Test Site (NTS); Oak Ridge Reservation (ORR), Tennessee; Rocky Flats Environmental Technology Site, Colorado, and Savannah River Site (SRS), South Carolina.

*Hanford Site, Washington*

Located in southeastern Washington State, Hanford encompasses 1450 square kilometers ($km^2$). From 1940 to 1989, nuclear weapons production took place, leaving several production reactors, chemical separations plants, and solid and liquid storage sites. The unsaturated, or vadose zone, on the central plateau area is 60–90 meters (m) thick. Here, several trillion liters of contaminated water and supernatant liquid were discharged or gravity-settled via, basins, cribs, trenches, tanks, etc., causing ground water and soil contamination from radionuclides (primarily, tritium, uranium, cesium-137, strontium-90, technecium-99, and iodine-129), metals (e.g. chromium), and DNAPLs (e.g. carbon tetrachloride). Prior to the 1990s, it was thought that the sorption capabilities of the soil in the vadose zone would limit migration of radionuclides; however, recent conceptual and mathematical models indicate more rapid migration potential to the groundwater.

The DOE created the Groundwater/Vadose Zone Integration Project, described at: *http://www.bhi-erc.com/projects/vadose* to coordinate cleanup activities at Hanford. A number of projects were awarded in the 1999

EMSP Vadose Zone research call that were highly relevant to science needs at the Hanford site. DOE/Richland has identified important, current scientific issues for research that are not being addressed by others at the Hanford site, or within the current EMSP program. Resolution of these issues would advance the state of remediation and site closure at Hanford and other DOE sites as well. These scientific issues may be found in a briefing document at: *http://www.bhi-erc.com/projects/vadose/sandt/stdocs.htm.* A 2001 report by the National Academy of Sciences and the National Research Council, titled ''Science and Technology for Environmental Cleanup at Hanford'' presents the successes and improvement areas of the science and technology program in the Hanford cleanup. Interested investigators are also referred to the Fiscal Year 2001, Subsurface Contaminations Technology Needs list at: *http://www.pnl.gov/stcg/fy01needs/ss/index.stm* for a detailed description of site research needs.

*Idaho National Engineering and Environmental Laboratory*

Located west of Idaho Falls, Idaho, INEEL occupies 2,300 $km^2$ of semi-arid desert along the northern margin of the Eastern Snake River Plain. The site was established as a building, testing, and operating station for various types of nuclear reactors and propulsion systems. Spent fuel from the naval reactor program is also managed there. Low levels of plutonium have been found in ground water beneath the Radioactive Waste Management Complex (RWMC)—a disposal site that received low-level and transuranic waste beginning in 1952. Pit 9, a trench within the RWMC, received an estimated 7,100 $m^3$ of sludge and solids contaminated with plutonium and americium. Similar to Hanford, at the time, the thick (60–240 m) unsaturated zone of volcanic strata was thought to impede contaminant migration to the underlying aquifers. Estimates today indicate travel times of tens of years, as opposed to estimates made in the 1950s and 1960s of thousand-year travel times. Interested investigators are referred to the INEEL Science and Technology Needs list at: *http://www.inel.gov/st-needs* for a detailed description of fundamental science studies that will assist, accelerate, or reduce the cost of cleanup.

*Nevada Test Site*

The NTS became the primary location for atmospheric and underground nuclear testing in 1951. The Test Site occupies 3,500 $km^2$ of land in southern Nevada, north of Las Vegas about 143 km. Surface and shallow soil are contaminated with americium, plutonium and depleted uranium, and with metals from nuclear detonations, safety test shots, and rocket engine testing. Underground nuclear testing resulted in over 300 million curies of subsurface contamination including, tritium, plutonium, uranium, cesium, strontium, and other fission products. Tritium plumes have been detected from testing locations because this radionuclide is very mobile in the water phase. Plutonium, once thought to be relatively immobile in groundwater due to low solubilities and strong sorption on mineral surfaces, was detected 1.3 km down gradient of the Benham test on Pahute Mesa, in a 600-m-deep monitoring well. The plutonium was detected on colloids, leaving open the question of the contribution of colloidal transport of plutonium versus the prompt injection effects of the detonation blast. Basic research in the mechanical and geochemical transport of plutonium is warranted. Other site-specific technology needs can be found at: *http://www.nv.doe.gov/programs/envmgmt/blackmtn/TDSTCGTechnologyNeeds.htm.*

*Oak Ridge Reservation*

Located about 10 km west of Knoxville, Tennessee, ORR was built originally to produce and chemically separate plutonium. Later, ORR produced isotopes and conducted isotopic and hazardous constituents research. ORR has three main facilities: the Oak Ridge National Laboratory supported plutonium production research and development, and the Y–12 and K–25 Plants produced highly enriched uranium via magnetic separation and gaseous diffusion, respectively. Wastes from these activities were placed in burial grounds, that have subsequently caused soil and water contamination in the Melton Valley Watershed, including strontium-90, tritium, cesium-137, and cobalt-60. Seepage from flooding of the waste trenches caused downgradient migration of radionuclides. The sediments behind White Oak Dam are significantly contaminated with radionuclides; White Oak Creek drains Melton Valley and the surface water contains tritium. Basic research is needed to better locate and characterize contamination hot spots in the burial grounds, as well as to improve the site conceptual and mathematical models, which include fractured-bedrock flow and karst hydrology. Containment systems, such as caps and barriers, and performance monitoring of engineered systems will be constructed under the cleanup program to verify and validate long-term performance and model results. Investigators are referred to the Technology Needs Database at: *http://www.em.doe.gov/techneed* to review Oak Ridge's needs list in the areas of characterization, treatment, storage, and disposal of hazardous and radioactive wastes.

*Rocky Flats*

Rocky Flats Environmental Technology Site is located on the western side of Denver, Colorado, and encompasses 140 hectares. Operations ceased in 1989 after years of fabrication and components assembly for nuclear weapons production. Materials used in these activities included plutonium and enriched uranium metals and oxides. Poor storage and disposal practices resulted in surface and groundwater contamination on and offsite, principally, soil contamination with americium, plutonium, and uranium. Cleanup and closure actions include removal and stabilization of contaminated media, construction of caps and barriers, and long term monitoring and surveillance. Investigators are referred to the Rocky flats website at: *http://www.aimsi.com/rockyflats/* to review science and technology needs, as well as related information.

*Savannah River Site*

The SRS was established in 1950 near Aiken, South Carolina, to produce radioactive isotopes for use in nuclear weapons production. Encompassing 800 $km^2$, the Site contains production reactors, chemical processing plants, and solid and liquid waste storage facilities. The Burial Ground Complex in the central part of SRS received low- and intermediate-level radioactive and mixed waste from 1952–1995. The source term of the waste is somewhat uncertain, and has leaked to groundwater creating plumes of hazardous chemicals, metals, and radionuclides. Closure of the Complex will include removal or stabilization of highly contaminated zones, an engineered and layered cover, possibly consisting of synthetic material, and long term monitoring and surveillance.

A persistent DNAPL plume of 140 hectares is associated with a manufacturing area in the northern portion of the site. From the 1950s to the 1980s, wastewater from fuel and target manufacturing seeped into the ground via an overflow basin, releasing solvents and heavy metals to the environment. A pump and treat system at the down gradient end of the plume

controls spreading, 400 monitoring wells are used to collect data for surveillance and modeling. Site engineers and scientists continue to look for new technologies and methods to better characterize, describe, and remediate the plume and its source(s). Investigators are referred to the SRS website at: *http://www.srs.gov/general/scitech/scitech.htm* to review science and technology needs, as well as related information.

**References**

**Note:** World Wide Web locations of these documents are provided where possible. For those without access to the World Wide Web, hard copies of these references may be obtained by writing Mark A. Gilbertson at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

DOE. 2001. A National Roadmap for the Vadose Zone Science & Technology. *http://www.inel.gov/vadosezone/*

DOE. 1998a. Accelerating Cleanup: Paths to Closure—June 1998. *http://www.em.doe.gov/closure*

DOE. 1998b. Report to Congress on the U.S. Department of Energy's Environmental Management Science Program—April 1998. *http://emsp.em.doe.gov/products.htm#rep*

DOE. 1996. Closing the Circle on the Splitting of the Atom: The Environmental Legacy of Nuclear Weapons Production in the United States and What the Department of Energy is Doing About It. The U.S. Department of Energy, Office of Environmental Management, Office of Strategic Planning and Analysis, Washington, DC. *http://www.energy.gov/library/sub/pubcenter.html*

National Research Council. 2001a. A Strategic Vision for Department of Energy Quality of Research and Development. National Academy Press, Washington, DC. *http://www.nap.edu/browse.html*

National Research Council. 2001b. Science and Technology for Environmental Cleanup at Hanford. National Academy Press, Washington, DC. *http://www.nap.edu/browse.html*

National Research Council. 2000. Research Needs in Subsurface Science, U.S. Department of Energy's Environmental Management Science Program. National Academy Press, Washington, DC. *http://www.nap.edu/browse.html*

National Research Council. 1997. Building an Environmental Management Science Program: Final Assessment. National Academy Press, Washington, DC. *http://www.nap.edu/browse.html*

National Research Council. 1995. Improving the Environment: An Evaluation of DOE's Environmental Management Program. National Academy Press, Washington, DC. *http://www.nap.edu/browse.html*

Richland Environmental Restoration Project, Groundwater/Vadose Zone Integration Project. *http://www.bhi-erc.com/projects/vadose/*

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on December 18, 2001.

**John Rodney Clark,**

*Associate Director of Science for Resource Management.*

[FR Doc. 02–284 Filed 1–4–02; 8:45 am]

**BILLING CODE 6450–02–U**

## DEPARTMENT OF ENERGY

### Notice of Restricted Eligibility; Support of Advanced Fossil Resource Utilization Research by Historically Black Colleges and Universities and Other Minority Institutions

**AGENCY:** National Energy Technology Laboratory (NETL), Department of Energy (DOE).

**ACTION:** Notice of restricted eligibility.

**SUMMARY:** The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award financial assistance (grants) to U.S. Historically Black Colleges and Universities (HBCU) and Other Minority Institutions (OMI) in support of innovative research and development of advanced concepts pertinent to fossil resource conversion and utilization. Applications will be subjected to a review by a DOE technical panel, and awards will be made to a select number of applicants based on the scientific merit of the application, relevant program policy factors, and the availability of funds. Collaboration with private industry is encouraged.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cynthia Y. Mitchell, U.S. Department of Energy, National Energy Technology Laboratory, Acquisition and Assistance Division, P.O. Box 10940, MS 921–107, Pittsburgh, PA 15236–0940, telephone: 412–386–4862, fax: 412–386–6137, e-mail: *mitchell@netl.doe.gov.* The solicitation (available in both Word Perfect 6.1 for Windows and Portable Document Format (PDF)) will be released on DOE's NETL World Wide Web Server Internet System (*http://www.netl.doe.gov/business/solicit*) on or about December 20, 2001. No telephone requests will be honored for solicitation copies.

**SUPPLEMENTARY INFORMATION:** *Title of Solicitation:* ''Support of Advanced Fossil Resource Utilization Research by Historically Black Colleges and Universities and Other Minority Institutions''

*Objectives:* Through Program Solicitation No. DE–PS26–02NT41430, the Department of Energy seeks applications from HBCU and OMI and HBCU/OMI-affiliated research institutes for innovative research and development of advanced concepts pertinent to fossil resource conversion and utilization. The resultant grants are intended to maintain and upgrade educational, training, and research capabilities of our HBCU/OMI in the fields of science and technology related to fossil energy resources; to foster private sector participation, collaboration, and interaction with HBCU/OMI; and to provide for the exchange of technical information and to raise the overall level of HBCU/OMI competitiveness with other institutions in the field of fossil energy research and development. Thus, the establishment of linkages between the HBCU/OMI and the private sector fossil energy community is critical to the success of this program, and consistent with the Nation's goal of ensuring a future supply of fossil fuel scientists and engineers from an previously under-utilized resource.

*Eligibility:* Eligibility for participation in this Program Solicitation is restricted to HBCU and OMI recognized by the Office for Civil Rights (OCR), U.S. Department of Education, and identified on the OCR's U.S. Department of Education list of U.S. Accredited Postsecondary Minority Institutions list in effect on the closing date of the Program Solicitation. *Applications submitted by any institution not on OCR's aforementioned list are ineligible for technical evaluation and award.* For information regarding the qualification criteria and process of becoming recognized by the Education Department's OCR as a ''Minority Institution,'' institutions should contact the Education Department directly at the following address: Mr. Peter A. McCabe, Office for Civil Rights, U.S. Department of Education, Washington DC 20202, telephone 202–205–9567.

**Note:** The Education Department should only be contacted on matters related to Institutional status; questions regarding the Program Solicitation should be directed to Ms. Mitchell at DOE.

Applications from HBCU/OMI-affiliated research institutes must be submitted through the college or

university with which they are affiliated. The university (*not* the university-affiliated research institute) will be the recipient of any resultant DOE grant award. Applications submitted in response to the solicitation must meet the following two criteria: the Principal Investigator or a Co-Principal Investigator must be a teaching professor at the submitting university listed in the application; *and* a minimum of 30% of personnel time invoiced under the grant is to pay for student assistance for each year of the grant. Although it is not required as an application qualification criterion, collaboration with the private sector is encouraged, and applications proposing private sector collaboration may be evaluated more favorably. The solicitation will contain a complete description of the technical evaluation factors and relative importance of each factor. Collaboration by the private sector with the HBCU/OMI may be in the form of cash cost sharing, consultation, HBCU/OMI access to industrial facilities or equipment, experimental data and/or equipment not available at the university, or as a subgrantee/subcontractor to the HBCU/OMI.

*Areas of Interest:* In order to develop and sustain a national program of HBCU/OMI research in advanced and fundamental fossil fuel studies, the Department of Energy is interested in innovative research and development of advanced concepts pertinent to fossil fuel conversion and utilization limited to the following nine (9) technical topics:

Topic 1—Advanced Environmental Control Technologies for Coal
Topic 2—Advanced Coal Utilization
Topic 3—Clean Fuels Technology
Topic 4—Heavy Oil Upgrading and Processing
Topic 5—Advanced Recovery, Completion/Stimulation, and Geoscience Technologies for Oil
Topic 6—Natural Gas Supply, Storage, and Processing
Topic 7—Infrastructure Reliability for Natural Gas
Topic 8—Fuel Cells
Topic 9—Facility/Student Exploratory Research Training Grants

**Note:** Technical Topic No. 9, *Faculty/Student Exploratory Research Training Grants,* is the *only* topic under this Program Solicitation wherein the inclusion or exclusion of private sector collaboration will not affect the technical evaluation of the application.

*Awards:* DOE anticipates issuing financial assistance (grants) for each project selected. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to funds available in this fiscal year. The limitation on the maximum DOE funding for each selected grant to be awarded under this Program Solicitation is as follows:

| | Maximum award |
|---|---|
| Topics 1–8: | |
| 0–12 months grant duration ..... | $85,000 |
| 13–24 months grant duration .... | 150,000 |
| 25–36 months grant duration .... | 200,000 |
| Topic 9: | |
| 0–12 months grant duration ..... | 20,000 |

Approximately $900,000 is planned for this solicitation. The total should provide support for four to eight research and development application selections (Topics 1–8), and approximately two to twelve faculty/student exploratory research training application selections (Topic 9).

*Solicitation Release Date:* The Program Solicitation is expected to be ready for release on or about December 20, 2001. Applications must be prepared and submitted in accordance with the instructions and forms contained in the Program Solicitation.

To be eligible, applications must be *received* by the designated DOE office by the closing time and date specified in the Program Solicitation (anticipated to be on or about February 1, 2002, at 5 PM Eastern Standard Time).

Issued in Pittsburgh, Pennsylvania on December 7, 2001.

**William R. Mundorf,**

*Contracting Officer, Acquisition and Assistance Division.*

[FR Doc. 02–283 Filed 1–4–02; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Science Financial Assistance Program Notice 02–14; Human Genome Program—Ethical, Legal, and Social Implications

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Office of Biological and Environmental Research (BER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications in support of the Ethical, Legal, and Social Implications (ELSI) subprogram of the Human Genome Program (HGP). Applications should focus on issues of (1) genetics and the workplace, (2) storage of genetic information and tissue samples, (3) education, or (4) complex or multigenic traits. The HGP is a coordinated, multidisciplinary, directed research effort aimed at obtaining a detailed understanding of the human genome at the molecular level. This particular research notice invites research applications that address ethical, legal, and social implications resulting from the use of information and knowledge resulting from the HGP.

**DATES:** Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 02–14, should be received by 4:30 p.m., E.S.T., January 24, 2002. Early submissions are encouraged. A response discussing the potential program relevance and encouraging or discouraging a formal application generally will be communicated within 20 days of receipt.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.S.T., March 28, 2002, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2002.

**ADDRESSES:** Preapplications, referencing Program Notice 02–14, should be sent by email to *Joanne.Corcoran@science.doe.gov* or by mail to Dr. Daniel W. Drell, Office of Biological and Environmental Research, SC–72, 19901 Germantown Road, Germantown, MD 20874–1290.

Formal applications, referencing Program Notice 02–14, should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–14. This address also must be used when submitting applications by U.S. Postal Service Express Mail, or any commercial mail delivery service, or when hand carried by the applicant. An original and seven copies of the application must be submitted.

**FOR FURTHER INFORMATION CONTACT:** Dr. Daniel W. Drell, Office of Biological and Environmental Research, SC–72, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–4742 or email: *daniel.drell@science.doe.gov.* The full text of Program Notice 02–14 is available via the Internet using the following web site address: *http://www.sc.doe.gov/production/grants/grants.html.*

**SUPPLEMENTARY INFORMATION:** The DOE encourages the submission of applications that will address, analyze, or anticipate ELSI issues associated with human genome research in four broad areas:

**I. Genetics and the Workplace**

Research is encouraged on the uses, impacts, implications of, and privacy of genetic information in the workplace. A particular emphasis of this solicitation is screening and monitoring programs that involve the collection and evaluation of worker genetic information. Research is also encouraged on the use of the workplace as a research venue and the resulting challenges for Institutional Review Boards (IRBs) that are responsible for the oversight of such activities. Research could explore historical experiences, current practices, international practices, the economics of, and lessons learned as they pertain to the collection and use of worker genetic information. Research can include issues arising from the creation, use, maintenance, privacy, and disclosure of genetic information obtained in workplace settings that can include, but are not limited to, workplaces at which DOE activities are taking place or have in the past.

**II. Storage of Information and Samples**

Research is encouraged on access to, and protection of genetic information stored in databases (especially computerized databases), or obtained from stored human tissue or sample archives. Research can explore threats to, issues surrounding, and protection of the confidentiality of genetic data in databanks and databases, approaches to anonymizing existing or new genetic records and samples, approaches to assessing the economics of genetic data collection, and explorations of the intellectual property protection of genetic information and genome research tools, technologies, and resources. Research can also explore the privacy and ownership issues associated with genetic data in records collected as part of occupational medical surveillance, as well as in academic genetics research.

**III. Education**

Research is encouraged to create and disseminate relevant educational materials in any appropriate medium that will enhance understanding of the ethical, legal, and social aspects of the HGP among the public or specified groups. A particular interest of this solicitation is the creation of innovative and novel materials for Institutional Review Boards (IRB) and Ethics Boards that review protocols involving the gathering of genetic information from genome investigators who work with human subjects, materials from which human genetic information can be obtained, or genetics research involving the workplace. Educational efforts should not target specific groups that have already been the subject of past ELSI awards (for further information about past awards under previous ELSI solicitations, see *http://www.ornl.gov/hgmis/elsi/elsi.html*). Applications for new mass media projects (e.g., TV documentaries) are not encouraged, nor are new high school- or college-level curricula, under this notice.

**IV. Complex or Multigenic Traits**

Research is encouraged that addresses the ethical, legal, and societal implications of advances in the scientific understanding of complex or multi-genic characteristics and conditions. Conditions may include, but are not limited to, behavioral conditions, diseases of aging, vulnerability to substance abuse, susceptibility to workplace exposure hazards (such as chemicals or radiation), or other common conditions with a partial genetic basis. This research may address:

(1) Gene—environment interactions that result in diseases or disease susceptibilities.

(2) Studies that explore the novel issues raised by research on complex conditions.

(3) The responses of institutions (e.g., courts, employers, companies or company health officers, schools, etc., including Federal Agencies) that must deal with ''genetic uncertainty,'' e.g., uncertainty about the significance of results of screening for susceptibility genes, uncertainty about the role of yet-undefined environmental influences, and uncertainty about the implications of different alleles at highly polymorphic genes when those alleles are not fully characterized.

All applications should demonstrate knowledge of the relevant literature, any related completed activities, and should include detailed plans for the gathering and analysis of factual information and the associated ethical, legal, and social implications. All applications should include, where appropriate, detailed discussion of human subjects protection issues, e.g., storage of, manipulation of, and access to personal genetic data. Provisions to ensure the inclusion of women, minorities, and potentially disabled individuals must be described, unless specific exclusions are scientifically necessary and justified in detail. All proposed research applications should provide a plan to disseminate results to the widest appropriate audience as well as a time line for their production and dissemination. In the absence of tangible products, rigorous assessments must be included to evaluate progress or outcomes. All applications should include letters of agreement to collaborate from potential collaborators; these letters should specify the contributions the collaborators intend to make if the application is accepted and funded.

If an educational effort for a specific group is proposed, the value to the Human Genome Program of that group or community should be explained in detail and measures for assessment of effectiveness described. In addition, the DOE encourages applications for the support of novel and innovative conferences focusing on the concerns addressed in this notice, e.g., privacy and access to research materials, workplace uses of genetic information, education of targeted groups such as IRBs and investigators, and susceptibility/sensitivity genes and polymorphisms. Educational and conference applications should demonstrate awareness of the relevant literature, include detailed plans for the accomplishment of project goals, and clearly describe the outcome or ''deliverables'' from the activity. For conference applications, a detailed and largely complete roster of speakers is necessary. Educational and conference applications must also demonstrate awareness of the need to reach the widest appropriate audience, and not be focused exclusively on a local community or group. For all conferences supported under this notice, a summary report is required following the conference. In applications that propose the production of educational materials, the DOE requests that samples of previous similar work by the producers and writers be submitted along with the application. In applications for the support of educational activities, the DOE requires inclusion of a plan for assessment of the effectiveness of the proposed activities.

DOE does not encourage applications dealing with issues consequent to the initiation or implementation of genetic testing protocols. Also, DOE does not encourage survey-based research, unless a compelling case is made that this methodology is critical to address an issue of uncommon significance. DOE generally discourages applications for geographically limited efforts (e.g., college or school curricula that will not be disseminated) and requests detailed

justification of the need for external support, beyond normal departmental and college resources, evidence of commitment from the parent department or college, and a dissemination plan. Applications for the writing of scholarly publications or books should include justifications for the relevance of the publications or book to the goals of the Human Genome Project as well as discussion of the estimated readership and impact. DOE ordinarily will not provide unlimited support for a funded program and thus strongly encourages the inclusion of plans for transition to self-sustaining status.

The dissemination of materials and research data in a timely manner is essential for progress toward the goals of the DOE Human Genome Program. The BER requires the timely sharing of resources and data. Applicants should, in their applications, discuss their plans for disseminating research results and materials that may include, where appropriate, publication in the open literature, wide-scale mailings, etc. Once BER and the applicant have agreed upon a distribution plan, it will become part of the award conditions. Funds to defray the costs of disseminating results and materials are allowable; however, such requests must be sufficiently detailed and adequately justified. Applicants should also provide time lines projecting progress toward achieving proposed goals.

**Additional Request for Small Grants**

The DOE also encourages small grant applications, to a maximum of $33,000 total costs, for innovative and exploratory activities within the previously described areas. Such exploratory grants could be used to carry out pilot or investigative research on an issue consistent with any of the above areas of ELSI research, support a sabbatical leave to organize and hold a conference, or to initiate start-up studies that could generate preliminary data for a subsequent grant application. This program could be appropriate for a research scientist interested in exploring a related area of ELSI research, or a scholar conducting ELSI research of one type to explore an ELSI research topic of a different type. Such applications must use the standard DOE application forms that can be found on the Internet at: *http://www.sc.doe.gov/production/grants/grants.html.* The description of research activities should not be more than five pages and curriculum vitae should not exceed two pages. These small grants, which will be peer reviewed, will not extend beyond one year from the award date. It is expected that up to seven of these awards might be made in FY 2002. As with larger applications to this notice, applications should be sent to the address given above.

**Program Funding**

It is anticipated that approximately $800,000 will be available for multiple grant awards (including any small grants) to be made during Fiscal Year 2002, contingent upon the availability of appropriated funds. Multiple year funding of grant awards is expected, and is also contingent upon the availability of funds. Previous awards have ranged from $50,000 per year up to $500,000 per year with terms from one to three years; most awards average about $200,000 per year for two or three years (not applicable for any small grants as stated above). Similar award sizes are anticipated for new grants. Generally, conference awards do not exceed $25,000 and indirect costs are not allowed as part of conference grant awards.

**Collaboration**

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, DOE National Laboratories, industry, non-profit organizations, other federal laboratories and federally funded research and development centers (FFRDCs), where appropriate, and to incorporate cost sharing and/or consortia wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the Internet at: *http://www.sc.doe.gov/production/grants/Colab.html.*

**Preapplications**

A brief preapplication should be submitted. The preapplication should identify, on the cover sheet, the institution, Principal Investigator name, address, telephone, fax and email address, title of the project, and the field of scientific research. The preapplication should consist of a two to three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the DOE's Human Genome Program. Preapplications are strongly encouraged but not required prior to submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Applications will be subjected to a scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;

2. Appropriateness of the Proposed Method or Approach;

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

DOE policy requires that potential applicants adhere to 10 CFR part 745 ''Protection of Human Subjects'', or such later revision of those guidelines as may be published in the **Federal Register**.

The Office of Science, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules,'' which is available via the World Wide Web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf,* (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance number for this program is

81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC December 21, 2001.

**John Rodney Clark,**

*Associate Director of Science for Resource Management.*

[FR Doc. 02–282 Filed 1–4–02; 8:45 am]

BILLING CODE 6450–02–U

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER01–2814–000, ER01–2814–001]**

## Citizens Energy Corporation; Notice of Issuance of Order

December 31, 2001.

Citizens Energy Corporation (Citizens) submitted for filing a rate schedule under which Citizens will engage in wholesale electric power and energy transactions at market-based rates. Citizens also requested waiver of various Commission regulations. In particular, Citizens requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Citizens.

On December 19, 2001, pursuant to delegated authority, the Director, OMTR/Tariffs and Rates-East, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Citizens should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Citizens is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Citizens, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Citizens' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 18, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

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

*Acting Secretary.*

[FR Doc. 02–279 Filed 1–4–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC02–38–000, et al.]**

## Montana-Dakota Utilities Co., et al.; Electric Rate and Corporate Regulation Filings

December 31, 2001.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

### 1. Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.

[Docket No. EC02–38–000]

Take notice that on December 26, 2001, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (Montana-Dakota) tendered for filing with the Federal Energy Regulatory Commission an Application to Transfer Operational Control Over Transmission Facilities to the Midwest Independent Transmission System Operator, Inc. under Section 203 of the Federal Power Act.

*Comment Date:* January 16, 2002.

### 2. Southern California Edison Company

[Docket No. ER02–608–000]

Take notice that on December 26, 2001, Southern California Edison Company (SCE) tendered for filing an amendment to the Firm Transmission Service Agreement (Victorville-Lugo/Miday) between SCE and M–S–R Public Power Agency (M–S–R) First Revised Rate Schedule FERC No. 339 (M–S–R Agreement)

The amendment to the M–S–R Agreement clarified scheduling obligations under that Agreement by deleting provisions concerning scheduling and dispatch service.

A copy of this filing was served upon the Public Utilities Commission of the State of California, the ISO and M–S–R.

*Comment Date:* January 16, 2002.

### 3. ExTex LaPorte Limited Partnership

[Docket No. EG02–60–000]

Take notice that on December 21, 2001, ExTex LaPorte Limited Partnership (ExTex) filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935 and Part 365 of the Commissions regulations.

ExTex currently is an EWG and owns and operates a 165 MW combustion turbine generating facility located in LaPorte, Texas. ExTex will acquire two additional generating facilities located in the Electric Reliability Council of Texas. ExTex will acquire the Handley Steam Electric Station (''Handley'') and the Mountain Creek Steam Electric Station (Mountain Creek). Handley is a 1,440 MW gas-fired steam turbine generating facility located in Fort Worth, Texas. Mountain Creek is 894 MW gas-fired steam turbine generating facility located near Dallas, Texas.

*Comment Date:* January 22, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

### 4. Kansas City Power & Light Company

[Docket No. ER99–1005–001]

Take notice that on December 27, 2001, Kansas City Power & Light Company (KCPL) tendered for filing an updated market power study under KCPLs market-based rate tariff.

Copies of this filing have been served on the Kansas Corporation Commission and the Missouri Public Service Commission.

*Comment Date:* January 17, 2002.

### 5. Cleco Power LLC

[Docket Nos. ER01–1099–007, ER01–3095–001, and ER02–54–001]

Take notice that on December 26, 2001, Cleco Power LLC (Cleco Power) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Notice of Cancellation pursuant to 18 CFR 35.15 and Cancellation Sheets, effective January 1, 2002, canceling Cleco Utility Group Inc.'s (Cleco Utility) Rate Schedules 6, 12, and 18 and all supplements. Cleco Power simultaneously filed Cleco Power

Rate Schedules 9 and 15, which are essentially the same as Cleco Utility Rate Schedules 12 and 18, respectively. Cleco Power states that Cleco Utility's Rate Schedule 6 with Gulf States Utilities Company will not be filed as a Cleco Power Rate Schedule because the agreement with Gulf States Utilities Company has expired by its own terms.

Take notice that Cleco Power filed Substitute Original Sheet Nos. 77 and 78 to Cleco Powers FERC Electric Tariff, Original Volume No. 1. Cleco Power also gave notice that Cleco Utility service agreements T1S4 and T1S19, that were canceled effective May 29, 2001, will not be refiled as Cleco Power service agreements because service is no longer being provided under them.

Cleco Power also filed a Third Substitute Original Sheet No. 26 to RS 12 with the City of Lafayette, Louisiana.

*Comment Date:* January 16, 2002.

**6. Carolina Power & Light Company and Florida Power Corporation**

[Docket Nos. ER01–1807–008, and ER01–2020–005]

Take notice that on December 27, 2001 Progress Energy, Inc. (Progress Energy), on behalf of Florida Power Corporation (FPC), tendered for filing revised service agreements (Revised Service Agreements) under FPC's open-access transmission tariff, FERC Electric Tariff, Second Revised Volume No. 6 (FPCs OATT), in compliance with the Commissions June 25, 2001, September 21, 2001 and November 26, 2001 orders in these proceedings.

See Carolina Power & Light Co. and Florida Power Corp., 95 FERC ¶ 61,429 (2001) (Carolina Power). Progress Energy also tendered: (1) An index of FPCs Revised Service Agreements (FPC Index); (2) revised versions of indices that were contained in the November 26, 2001 filing in these proceedings; (3) Notices of Cancellation of service agreements under both FPCs OATT and Carolina Power & Light Company's (CP&L), FERC Electric Tariff, Third Revised Volume No. 3 (CP&L's OATT); (4) canceled service agreement cover sheets to cancel service agreements under both FPCs OATT and CP&L's OATT in compliance with Order No. 614; and (5) First Revised Service Agreements filed under both FPCs OATT and CP&Ls OATT to reflect the succession of one entity by another.

Progress Energy respectfully requests that the Revised Service Agreements become effective on the date set forth on the cover sheet for each Revised Service Agreement and that the Notices of Cancellation become effective as of February 25, 2002.

Copies of the filing were served upon the Commissions official service list and the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Florida Public Service Commission.

*Comment Date:* January 17, 2002.

**7. New York Independent System Operator, Inc.**

[Docket No. ER01–2967–002]

Take notice that on December 26, 2001, the New York System Operator, Inc. (NYISO) filed revisions to Attachment S of its Open Access Transmission Tariff, which contains rules to allocate responsibility for the cost of new interconnection facilities, pursuant to the Commission's Order issued on October 26, 2001, in the above-captioned docket.

The NYISO has requested an effective date of September 26, 2001, for the compliance filing, the effective date granted in the Commission's Order issued on October 26, 2001.

The NYISO has served a copy of the compliance filing on each person designated on the official service list maintained by the Commission for the above-captioned docket.

*Comment Date:* January 16, 2002.

**8. New York Independent System Operator, Inc.**

[Docket No. ER01–2967–003]

Take notice that on December 27, 2001, the New York System Operator, Inc. (NYISO) filed revisions to Sheet Nos. 39 and 39A of its Open Access Transmission Tariff, to complete the compliance filing made on December 26, 2001 pursuant to the Commission's Order issued on October 26, 2001, in the above-captioned docket.

The NYISO has requested an effective date of September 26, 2001, for the compliance filing, the effective date granted in the Commission's Order issued on October 26, 2001.

The NYISO has served a copy of the compliance filing on each person designated on the official service list maintained by the Commission for the above-captioned docket.

*Comment Date:* January 17, 2002.

**9. Southern Indiana Gas and Electric Company**

[Docket No. ER02–603–000]

Take notice that on December 26, 2001, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing an Agreement for Firm Point-To-Point Transmission Service with Dynegy Power Marketing, Inc. under Part II of SIGECO's Transmission Services Tariff, Docket No. 0A96–117–000, filed July 9, 1996. To date, no Service has been provided by SIGECO to Dynegy Power Marketing, Inc. pursuant to this Agreement.

SIGECO requests waiver of the 60-day prior notice requirement to allow the service agreements to become effective as of November 15, 2001.

*Comment Date:* January 16, 2002.

**10. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company**

[Docket No. ER02–604–000]

Take notice that on December 26, 2001, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with OGE Energy Resources, Inc. and Florida Power Corporation.

Ameren Energy seeks Commission acceptance of these service agreements effective December 1, 2001.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the respective counterparties.

*Comment Date:* January 16, 2002.

**11. Puget Sound Energy, Inc.**

[Docket No. ER02–605–000]

Take notice that on December 26, 2001, Puget Sound Energy, Inc. (PSE), tendered for filing a proposed Sixth Revised Volume No. 7 of its Open Access Transmission Tariff to reflect its reclassification of transmission and distribution facilities, desegregate and reduce its rates in accordance with the reclassification, and make other non-substantive changes in compliance with Order 614.

PSE requests an effective date of January 1, 2002 for the above-described tariff changes.

Copies of the filing were served on PSE's jurisdictional customers and the Washington State Utilities and Transportation Commission.

*Comment Date:* January 16, 2002.

**12. PJM Interconnection, L.L.C.**

[Docket No. ER02–606–000]

Take notice that on December 26, 2001, PJM Interconnection, L.L.C. (PJM), submitted for filing amendments to Schedules 11 and 11A the Amended and Restated Operating Agreement of

PJM Interconnection, L.L.C. (Operating Agreement) to facilitate operation of the capacity credit markets in both PJM and PJM West (when it becomes effective) and to clarify certain provisions. Specifically the amendments eliminate (1) reference to ''Fixed Block'' bids, which are not contemplated; (2) conducting multiple Daily Markets on a Friday or day before a holiday; and (3) the requirement that Sell Offers and Buy Bids for the Daily Capacity market must be received on the day on which the market is to be conducted. Certain sections in Schedule 11 of the Operating Agreement also are deleted because the transition period for the capacity market in the PJM control area has expired and the sections no longer apply.

PJM is requesting an effective date for the amendments of January 1, 2002.

Copies of this filing were served upon all PJM members, Allegheny Power, and each state electric utility regulatory commission in the PJM control area and PJM West region.

*Comment Date:* January 16, 2002.

**13. Michigan Electric Transmission Company**

[Docket No. ER02–607–000]

Take notice that on December 26, 2001, Michigan Electric Transmission Company (METC) tendered for filing an unexecuted Generator Interconnection and Operating Agreement between METC and Mirant Zeeland, LLC.

METC requested that the Agreement become effective December 26, 2001.

Copies of the filing were served upon Generator and the Michigan Public Service Commission.

*Comment Date:* January 16, 2002.

**Standard Paragraph**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

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

*Acting Secretary.*

[FR Doc. 02–278 Filed 1–4–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 31, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

*a. Type of Application:* Preliminary Permit.

*b. Project No.:* 12137–000.

*c. Date filed:* November 7, 2001, supplemented December 28, 2001.

*d. Applicant:* Cambria Somerset Authority.

*e. Name of Project:* Que Pump Storage Project.

*f. Location:* At the existing Quemahoning Reservoir on Stonycreek River, in Somerset County, Pennsylvania. The project does not utilize federal or tribal lands.

*g. Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

*h. Applicant Contact:* Paul C. Rizzo, Paul C. Rizzo Associates, Inc., 105 Mall Boulevard, Monroeville, Pennsylvania 15146, (412) 856–9700.

*i. FERC Contact:* Regina Saizan, (202) 219–2673.

*j. Deadline for filing motions to intervene, protests, and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the project number (P–12137–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

*k. Description of Project:* The proposed project would consist of: (1) A proposed 30-acre upper reservoir, (2) a proposed concrete intake structure, (3) a proposed 900-foot-long, 59-inch-diameter steel penstock, (4) a proposed powerhouse containing two generating units having a total installed capacity of 100 MW, (5) the existing Quemahoning Reservoir (lower reservoir), (6) a proposed 2-mile-long, 23 kV transmission line, and (7) appurtenant facilities. The project would have an annual generation of 156 GWh.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business

address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

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

*Acting Secretary.*

[FR Doc. 02–280 Filed 1–4–02; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[TX–FRL–7126–1]**

## Notice of Deficiency for Clean Air Act Operating Permits Program; State of Texas

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

**ACTION:** Notice of deficiency.

**SUMMARY:** Pursuant to its authority under section 502(i) of the Clean Air Act (Act) and the implementing regulations at 40 CFR 70.10(b)(1), EPA is publishing this Notice of Deficiency (NOD) for the Texas Clean Air Act title V Operating Permits Program. The Notice of Deficiency is based upon EPA's finding that the State's periodic monitoring regulations, compliance assurance monitoring (CAM) regulations, periodic monitoring and CAM general operating permits (GOPs), statement of basis requirement, applicable requirement definition, and potential to emit registration regulation do not meet the minimum federal requirements of the Act and 40 CFR part 70. Publication of this notice is a prerequisite for withdrawal of Texas' title V program approval, but EPA is not withdrawing the program through this action.

**EFFECTIVE DATE:** January 7, 2002. Because this NOD is an adjudication and not a final rule, the Administrative Procedure Act's 30–day deferral of the effective date of a rule does not apply.

**FOR FURTHER INFORMATION CONTACT:** Jole C. Luehrs, Chief, Air Permits Section, Multimedia Planning & Permitting Division, Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–7250.

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us,'' or ''our'' means EPA.

**Table of Contents**

I. Description of Action
II. Deficiencies
A. Periodic Monitoring Regulations
B. Compliance Assurance Monitoring Regulations
C. Periodic Monitoring and Compliance Assurance Monitoring General Operating Permits
D. Statement of Basis Requirement
E. Applicable Requirement Definition
F. Potential to Emit Registration Regulation
III. Effect of Notice of Deficiency
IV. Administrative Requirements

### I. Description of Action

We are publishing this NOD for the Texas Clean Air Act (CAA or Act) title V program, which was granted interim approval on June 25, 1996. 61 FR 32693.[1] On May 22, 2000, we promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001. 65 FR 32035. The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, we agreed to publish a document in the **Federal Register** that would alert the public that it may identify and bring to our attention alleged programmatic and/or implementation deficiencies in title V programs, and that we would respond to the public's allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** document (March 11, 2001).

Public Citizen, on behalf of the American Lung Association of Texas, Environmental Defense, the law firm of Henry, Lowerre & Federick, Lone Star Chapter of the Sierra Club, Texas Center for Policy Studies, Sustainable Energy and Economic Development Coalition, Texas Campaign for the Environment, Galveston Houston Association for Smog Prevention, Neighbors for Neighbors, and Texas Impact (collectively referred to as ''commenters'') filed comments with EPA alleging several deficiencies with respect to the Texas title V program (Comment Letter). We have completed our review of those comments. We have identified deficiencies relating to Texas' periodic monitoring regulations, CAM regulations, periodic monitoring and CAM GOPs, statement of basis requirement, applicable requirement definition, and potential to emit registration regulation. These deficiencies are discussed below.

Under EPA's permitting regulations, citizens may, at any time, petition EPA regarding alleged deficiencies in state title V operating permitting programs. In addition, EPA may identify deficiencies

[1] On December 6, 2001, we promulgated full approval of Texas' Operating Permits Program. 66 FR 63318.

on its own. If, in the future, EPA agrees with a new citizen petition or otherwise identifies deficiencies, EPA may issue a new NOD or take other affirmative actions.

## II. Deficiencies

Below is a discussion of the comments that we have identified as deficiencies, and by this notice are requesting the State to correct the deficiencies.

### *A. Periodic Monitoring Regulations*

The commenters allege that instead of ensuring that every title V permit includes periodic monitoring, as required by 40 CFR 70.6(a)(3)(i)(B), 30 TAC 122.142(c) makes periodic monitoring optional because it only requires permits to include periodic monitoring ''as required by the executive director.'' [2] Further, the commenters contend that the Texas Natural Resource Conservation Commission's (TNRCC) rules specifically state that no facility need submit an application for periodic monitoring for approximately two years, or longer.[3] Therefore, the commenters conclude that these provisions are inconsistent with federal requirements. The commenters also assert that TNRCC's failure to require timely periodic monitoring has caused the issuance of numerous defective title V permits. Comment Letter at 12.

According to TNRCC,

> periodic monitoring is implemented in two phases. The first phase is at initial issuance for those emission limitations or standards with no monitoring, testing, recordkeeping, or reporting. The second phase is through the GOPs for those emission limitations or standards which only require a one-time test at start-up or when requested by the EPA. Each permit will contain periodic monitoring as appropriate.

26 *TexReg* 3747, 3785 (May 25, 2001).[4]

However, TNRCC's approach to implementing periodic monitoring does not comply with the requirements of part 70. The requirement for periodic monitoring is set forth in 40 CFR 70.6(a)(3)(i)(B), which requires that each permit must include:

> where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit * * *.''

A review of the relevant Texas regulations reveals that Texas' periodic monitoring regulations do not meet the requirements of part 70 and must be revised. Under 30 TAC 122.600, the periodic monitoring requirements of 30 TAC 122.142(c) are implemented through a periodic monitoring GOP, or a periodic monitoring case by case determination, in accordance with 30 TAC Chapter 122, Subchapter G—Periodic Monitoring.[5] TNRCC's use of a phased approach through the GOP process does not ensure that all permits have periodic monitoring *when they are issued*, as required by 40 CFR 70.6(a)(3)(i)(B). The regulations do not meet the requirements of part 70 because a facility does not have to apply for a periodic monitoring GOP until two years after the periodic monitoring GOP has been issued. 30 TAC 122.604(a)(1). Since the two year period starts after issuance of the GOP, a source's title V permit could be in effect for longer than two years before periodic monitoring is incorporated into the permit.[6] Therefore, this regulatory deficiency must be corrected. TNRCC must revise its regulations to ensure that *all title V permits, including all GOPs, when issued,* contain periodic monitoring requirements that meet the requirements of 40 CFR 70.6(a)(3)(i)(B).

In addition, in implementing the periodic monitoring requirement, TNRCC must ensure that each permit includes monitoring sufficient to assure compliance with the terms and conditions of the permit. *See* 40 CFR 70.6(c)(1).[7] Each permit must also include periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. *See* 40 CFR 70.6(a)(3)(i)(B). Thus, if the periodic monitoring for a particular applicable requirement is inadequate to assure compliance with the terms and conditions of the permit, 40 CFR 70.6(c)(1) and 30 TAC 122.142(b)(2)(B)(ii) require TNRCC to provide enhanced monitoring to assure compliance with the permit.

### B. Compliance Assurance Monitoring Regulations

The commenters allege that TNRCC's permit content rules do not require that title V permits include testing and monitoring sufficient to assure compliance. Instead, the rules provide that applications for CAM need not be submitted for approximately two years, and maybe longer. 30 TAC 122.704.[8] Thus, the commenters assert that TNRCC's failure to require sufficient testing and monitoring in its title V permits is a defect in its title V program and has resulted in the issuance of many ineffective and incomplete title V permits. Comment Letter at 12—14.

According to TNRCC, CAM, like periodic monitoring, is also being implemented in a phased approach:

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[2] 30 TAC 122.142(c) provides that ''each permit shall contain periodic monitoring requirements, as required by the executive director, that are designed to produce data that are representative of the emission unit's compliance with the applicable requirements.''

[3] 30 TAC 122.604(a)(1) & (2) provide that ''for an emission unit that is subject to an emission limitation or standard on or before the issuance date of a periodic monitoring GOP containing the emission limitation or standard, the permit holder shall submit an application no later than 30 days after the end of the second permit anniversary following issuance of the periodic monitoring GOP. For an emission unit that becomes subject to an emission limitation or standard after the issuance date of a periodic monitoring GOP containing the emission limitation or standard, the permit holder shall submit an application no later than 30 days after the second permit anniversary following the date that the emission unit became subject to the emission limitation or standard.''

The provisions of 30 TAC Chapter 122, Subchapter G (§ 122.600–122.612) ''[do] not apply to emission limitations or standards for which the executive director has determined that the applicable requirement has sufficient periodic monitoring (which may consistent of recordkeeping * * *.'' 30 TAC 122.602(b).

[4] However, a one-time test is not considered periodic monitoring. *Appalachian Power Company v. EPA*, 208 F.3d 1015, 1028 (D.C. Cir. 2000).

[5] 30 TAC 122.600(b) does allow TNRCC to establish periodic monitoring requirements through the permitting process for specific emission limitations or standards to satisfy 30 TAC 122.142(c).

[6] If the emission unit becomes subject to an emission limitation or standard after the issuance date of a period monitoring GOP, the permit holder must submit the application no later than 30 days after the end of the second permit anniversary following the date that the emission unit became subject to the emission limitation or standard. 30 TAC 122.604(a)(2).

[7] Also note that

> Where the applicable requirement already requires periodic testing or instrumental or non-instrumental monitoring, however, * * * the periodic monitoring rule in § 70.6(a)(3) does not apply even if that monitoring is not sufficient to assure compliance. In such cases, the separate regulatory standard at § 70.6(c)(1) applies instead. By its terms, § 70.6(c0(1)—like the statutory provisions it implements—calls for sufficiency reviews of periodic testing and monitoring in applicable requirements, and enhancement of that testing or monitoring through the permit as necessary to be sufficient to assure compliance with the terms and conditions of the permit. *In the Matter of Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants*, Petition No. VIII–00–1 at 18–19 (Administrator November 16, 2000).

[8] 30 TAC 122.704(a)(1) & (2) provide that ''for an emission unit that subject to this subchapter on or before the issuance unit that subject to this subchapter on or before the issuance date of a CAM GOP containing an emission limitation or standard that applies to that emission unit, the permit holder shall submit an application no later than 30 days after the end of the second permit anniversary following issuance of the CAM GOP. For an emission unit that becomes subject to this subchapter after the issuance date of a CAM GOP that applies to that emission unit, the permit holder shall submit an application no later than 30 days after the second permit anniversary following the date that the emission unit became subject to this subchapter.''

The executive director is implementing CAM and periodic monitoring through a phased approach based on permit issuance and SIC codes. The commission considered several factors when developing the schedule for application due dates. Due to the technical requirements in 40 CFR part 64, compliance with CAM and periodic monitoring may require permit holders to purchase and install new equipment or conduct performance testing. The application submittal schedule should allow permit holders a reasonable amount of time to budget for, purchase, install, and test equipment necessary to comply with CAM and periodic monitoring requirements. Furthermore, the schedule allows the executive director time to develop comprehensive monitoring options for inclusion in various CAM and periodic monitoring GOPs issued over time. Finally, under the schedule, permit holders will submit applications to the executive director in manageable numbers throughout each calendar year. The executive director will be able to review these applications in a more timely fashion than if all applications were due at the same time.

26 *TexReg* at 3786–87.

CAM is implemented through 40 CFR part 64 and 40 CFR 70.6(a)(3)(i)(A). 40 CFR 64.5 provides that CAM applies at permit renewal unless the permit holder has not filed a title V permit application by April 20, 1998, or the title V permit application has not been determined to be administratively complete by April 20, 1998. CAM also applies to a title V permit holder who filed a significant permit revision under title V after April 20, 1998. However, in this case, CAM would only apply to pollutant specific emission units for which the proposed permit revision is applicable.

40 CFR 70.6(a)(3)(i)(A) requires that each permit include ''all monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including part 64 of this chapter [CAM] * * * ''

The TNRCC implements CAM through either CAM GOPs or a CAM case-by case determination, in accordance with 30 TAC Chapter 122, Subchapter G—Compliance Assurance Monitoring. 30 TAC 122.700(a). The TNRCC's use of a phased approach does not ensure that all permits will have the CAM required by 40 CFR 70.6(a)(3)(i)(A), according to the schedule in 40 CFR 64.5 because a facility does not have to apply for a CAM GOP until two years after the CAM GOP has been issued. Since the two year period starts after issuance of the GOP, a source's title V permit could be renewed (or a significant permit revision issued) before CAM is incorporated into the permit.[9] The TNRCC regulations do not meet the requirements of the Act and part 70 and TNRCC must revise its regulations to ensure that all title V permits, including all GOPs, will have the CAM required by CFR 70.6(a)(3)(i)(A), according to the schedule in 40 CFR 64.5.

*C. Periodic Monitoring and Compliance Assurance Monitoring General Operating Permits*

The commenters allege that periodic monitoring and CAM are permit conditions which are required to be included in each title V permit. The TNRCC, however, is issuing title V permits without periodic monitoring or CAM, and allowing facilities to utilize the GOP process to adopt periodic monitoring and CAM. The commenters assert that because periodic monitoring and CAM are permit conditions, and not operating permits, the periodic monitoring and CAM GOPs do not comply with the requirement in 40 CFR 70.6(d) that GOPs must ''comply with all requirements applicable to other part 70 permits.'' For example, the commenters claim the periodic monitoring and CAM GOPs do not include enforceable emission limitations and standards, a schedule of compliance, and a requirement that the permittee submit to the permitting authority no less often than every six months, the results of any required monitoring, as required by title V. The commenters also assert that the CAM and periodic monitoring GOPs do not apply to ''numerous similar sources'', as required by 40 CFR 70.6(d). They apply statewide to any source that has to comply with applicable requirements which are listed in the GOP. Therefore, the commenters believe that CAM and periodic monitoring GOPs simply do not meet title V's definition of or requirements for general permits. Comment Letter at 21–22.

The TNRCC argues that

> the CAM and periodic monitoring GOPs were not designed to mimic a [site operating permit (SOP)]; therefore, the content will not be identical to the requirements of 40 CFR 70.6(a) and (b). The CAM and periodic monitoring GOPs are unique in that the information submitted will become a part of the existing SOP or GOP and are supplemental to an existing operating permit. The commission believes that Part 70 implements the requirements listed in 42 U.S.C. 7661b, Permit Applications. The commission believes its application requirement is consistent with 40 CFR 70.6(a) and (b). These requirements have been incorporated into a previously issued SOP or GOP and are not required for CAM or periodic monitoring GOP applications.

26 *TexReg* at 3786.

The TNRCC's use of GOPs to implement periodic monitoring and CAM does not comply with part 70. The requirements for GOPs are set forth in 40 CFR 70.6(d). 40 CFR 70.6(d)(1) provides that ''any general permit shall comply with all requirements applicable to other part 70 permits.'' The requirements for part 70 permits are set forth in 40 CFR 70.6. A review of Periodic Monitoring GOP No. 1 and CAM GOP No. 1 shows that the terms and conditions of these GOPs only relate to the respective monitoring requirements, monitoring options, and related monitoring requirements for certain applicable requirements.[10] Thus, they are missing a number of the requirements of 40 CFR 70.6, and therefore do not meet the requirements for GOPs set forth in 40 CFR 70.6(d). The fact that the missing requirements may be in another permit or permit application is irrelevant. 40 CFR 70.6(d) requires that all the requirements of 40 CFR 70.6 be included in a GOP. Therefore, Texas must revise its regulations to ensure that each GOP issued includes all of the requirements in 40 CFR 70.6, including the periodic monitoring and CAM requirements discussed in Sections II.A. and B above.[11] Furthermore, Texas must ensure that any GOP issued covers similar sources, as required by 40 CFR 70.6(d).

*D. Statement of Basis Requirement*

The commenters claim that TNRCC's rules do not require that it prepare and make available a statement setting forth the ''legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions)'', otherwise known as a ''statement of basis''.[12] Further, the commenters assert that there have been no statements of basis in the title V facility files they have reviewed. The files, however, do include a ''Technical Summary'', which includes a process description and tracks the facility's movement through the permitting process. The commenters claim that these ''Technical Summaries'' do not

[9] If the emission unit that becomes subject to Subchapter G after the issuance date of a CAM GOP that applies to that emission unit, the permit holder must submit an application no later than 30 days after the second permit anniversary following the date that the emission unit became subject to this subchapter. 30 TAC 122.704(a)(2).

[10] Periodic monitoring GOP No. 1 and CAM GOP No. 1 apply to nine different New Source Performance Standards, 40 CFR part 60, Subparts F, Y, CC, DD, HH, LL, NN, OOO, PPP; 30 TAC 111.111 (Visible Emissions), 30 TAC 111.151 (Emission Limits on Nonagricultural Processes), and 30 TAC 111.171 (Emission Limits on Agricultural Processes).

[11] Inclusion of CAM in GOPs is subject to the schedule set forth in 40 CFR 64.5.

[12] 40 CFR 70.7(a)(5).

explain the basis for the draft permit conditions. Therefore, the commenters contend that EPA should require TNRCC to prepare a statement of basis that meets the part 70 requirements. Comment Letter at 21–22.

According to TNRCC:

> [t]he executive director does not prepare a specific ''statement of basis'' for each permit, but rather has implemented this Part 70 provision by developing a permit that states a regulatory citation for each applicable requirement. The commission is unaware of any self-implementing statutory requirements that do not have parallel regulatory provisions. These permit conditions are based on the application and the technical review which includes a site inspection. The commission believes including this detail in the permits meets the requirements of Part 70 for including a statement of basis.

26 *TexReg* at 3769–70.

The TNRCC's approach to the ''statement of basis'' requirement does not comply with the requirements of part 70. 40 CFR 70.7(a)(5) requires that ''[t]he permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA and to any other person who requests it.'' For example, in the *Fort James Camas Mill* title V Petition Response, EPA stated that this section required that ''the rationale for the selected monitoring method must be clear and documented in the permit record.'' *In the Matter of Fort James Camas Mill*, Petition No. X–1999–1 at 8 (Administrator December 22, 2000).

Our review of TNRCC's regulations reveals that there is no state regulation corresponding to 40 CFR 70.7(a)(5). The ''Technical Summaries'' do not set forth the legal and factual basis for the draft permit conditions. Furthermore, the elements of the statement of basis may change depending on the type and complexity of the facility, and would also be subject to change because of future regulatory revisions. Accordingly, a statement of basis should include, but is not limited to, a description of the facility, a discussion of any operational flexibility that will be utilized at the facility, the basis for applying the permit shield, any federal regulatory applicability determinations, and the rationale for the monitoring methods selected.

Therefore, Texas must revise its regulations to require that it prepare and make available a statement setting forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions), and that this statement be sent to EPA and any person who requests it, as required by 40 CFR 70.7(a)(5). This provision will require TNRCC to explain why certain specific requirements, as set forth above, were included in the permit. *See In the Matter of Fort James Camas Mill*, Petition No. X–1999–1 at 8 (''rationale for selected monitoring method must be clear and documented in the permit record'').

*E. Applicable Requirement Definition*

The commenters allege that Texas' definition of ''applicable requirement'' does not include all applicable provisions of the Texas State Implementation Plan (SIP). For example, 30 TAC Chapter 101, Sections 101.1 through 101.30 (Subchapter A), are included in the Texas SIP. Yet the TNRCC only includes Subchapter H of Chapter 101 as an ''applicable requirement.'' Second, the commenters contend that the TNRCC's applicable requirement definition refers to Texas Administrative Code sections which may change without corresponding changes in the Texas SIP. Because title V facilities are obligated to comply with all provisions of the Texas SIP, the commenters assert that the Texas rules should generally state that any current provision of the Texas SIP is an applicable requirement. Comment Letter at 22–23.

The definition of applicable requirement in 40 CFR 70.2 includes, as they apply to emission units in a part 70 source, ''any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act, that implements the relevant requirements of the Act, including any revisions to that plan promulgated in [40 CFR part 52]''. Thus, the phrase ''relevant requirements of the Act'' is not limited to requirements relating to permit content.'' [13]

A review of Chapter 101, Subchapter A reveals that a number of these regulations are applicable requirements of the Act, including, but not limited to, 30 TAC 101.1, 101.6, 101.7, and 101.11.[14] Therefore, TNRCC must revise its definition of ''applicable requirement'' in 30 TAC 122.10(2) to include all the applicable provisions of its SIP in its definition of applicable requirement.

However, contrary to the commenters' assertions, we have concluded there is no requirement that TNRCC adopt a definition to generally state that any current provision of the Texas SIP is an applicable requirement. A State may cite to specific provisions of its administrative code, as Texas has done. Failing to adopt the general definition as set forth in 40 CFR 70.2 may result in TNRCC having to revise its title V program if it adopts an applicable requirement elsewhere in the SIP that does not fit within its definition of applicable requirement in its title V regulations.

*F. Potential to Emit Registration Regulation*

The commenters state that although part 70 allows facilities to avoid title V permitting by limiting their potential to emit (PTE), EPA Guidance requires that the limits be practically enforceable. However, the commenters assert that 30 TAC 122.122(e), which allows a facility to keep all documentation of its PTE limitations on site without providing those documents to the State or to EPA, is not practically enforceable.[15] The public files on the facility would contain no information regarding the limitations that the facility has adopted. Neither the State nor EPA would know about the limitations unless they specifically inquire about them at the facility, and therefore these limits would not be practically enforceable. Thus, the commenters contend that EPA should require that any limitations Texas allows on PTE be recorded in public files and practically enforceable. Comment Letter at 26—27.

(a) For purposes of determining applicability of the Federal Operating Permit Program under this chapter, the owner or operator of stationary sources without any other federally enforceable emission rate may limit their sources' potential to emit by maintaining a certified registration of emissions, which shall be federally enforceable.

* * *

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(d) In order to qualify for registrations of emissions under this section, the maximum emission rates listed in the registration must be less than those rates defined for a major source in § 122.10 of this title (relating to General Definitions).

(e) The certified registrations of emissions and records demonstrating compliance with such registration shall

[13] TNRCC has stated that it ''includes in the definition of applicable requirement those chapters and portions of chapters provided in the SIP that are *relevant to permit content*.'' 26 *TexReg* at 3759 (emphasis added).

[14] This is not an exhaustive list. We will work with TNRCC to identify all applicable requirements that must be included in its definition of applicable requirements, including any regulations outside of Chapter 101.

[15] 30 TAC 122.122 reads as follows:

be maintained on-site, or at an accessible designated location, and shall be provided, upon request, during regular business hours to representatives of the Texas Air Control Board or any air pollution control agency having jurisdiction.

According to TNRCC,

[it] agrees that a regulation limiting a site's potential to emit must be practically enforceable, but that certified registrations kept on site meet this requirement. The § 122.10 potential to emit definition specifies that ''any certified registration or preconstruction authorization restricting emissions * * * shall be treated as part of its design if the limitation is enforceable by the EPA.'' The EPA, in 40 CFR 52.21(b)(17), defines federally enforceable as ''all limitations and conditions which are enforceable by the administrator, including those * * * requirements within any applicable SIP.'' Since the commission submitted § 122.122 for incorporation into the SIP, the commission considers limits established under § 122.122 to be federally enforceable. Further, § 122.122 specifies that certain registration of emissions and records demonstrating compliance with the registration must be kept on-site, or at an accessible location, and shall, upon request, be provided to the commission or any air pollution control agency having jurisdiction. The commission does not believe that a certified registration of emissions must be submitted in order to be practically enforceable since the owner or operator must make the registration and any supporting documentation available during an inspection.

26 *TexReg* at 3761.

The TNRCC's approach to PTE limitations does not comply with the requirements of the Act. First, 30 TAC 122.122 is not part of the Texas SIP. The EPA has not approved 30 TAC 122.122, into the SIP. Therefore it is not federally enforceable.[16]

Even if the rule were federally enforceable, the rule must also be practically enforceable.[17] One of the requirements for practical enforceability is notice to the State.[18] Under 30 TAC 122.122, there is no requirement that the State be notified and the registrations are kept on site. Therefore, neither the public, TNRCC, or EPA know what the PTE limit is without going to the site. A facility could change its PTE limit several times without the public or TNRCC knowing about the change. Therefore, these limitations are not practically enforceable, and TNRCC must revise this regulation to make the regulation practically enforceable. The revised regulation must also be approved into the SIP before it, and the registrations, become federally enforceable.

### III. Effect of Notice of Deficiency

Title V of the Act provides for the approval of state programs for the issuance of operating permits that incorporate the applicable requirements of the Act. To receive title V program approval, a state permitting authority must submit a program to EPA that meets certain minimum criteria, and EPA must disapprove a program that fails, or withdraw an approved program that subsequently fails, to meet these criteria. These criteria include requirements that the state permitting authority have authority to ''assure compliance by all sources required to have a permit under this subchapter with each applicable standard, regulation or requirement under this chapter.'' CAA Section 502(b)(5)(A).

40 CFR 70.10(c)(1) provides that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70. This section goes on to list a number of potential bases for program withdrawal, including the case where the permitting authority fails to promulgate or enact new authorities when necessary. 40 CFR 70.10(c)(1)(i)(A).

40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the notice be published in the **Federal Register**. Today's notice satisfies this requirement and constitutes a finding of deficiency. If the permitting authority has not taken ''significant action to assure adequate administration and enforcement of the program'' within 90 days after publication of a notice of deficiency, EPA may take action under 40 CFR 70.10(b)(2). 40 CFR 70.10(b)(3) provides that, if a state has not corrected the deficiency within 18 months of the NOD, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. Upon EPA action, the sanctions will go into effect unless the state has corrected the deficiencies identified in this notice within 18 months after signature of this notice.[19] 40 CFR 70.10(b)(4) provides that, if the state has not corrected the deficiency within 18 months after the date of finding of deficiency, EPA must promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

This document is not a proposal to withdraw Texas' title V program. Consistent with 40 CFR 70.10(b)(2), EPA will wait at least 90 days, at which point it will determine whether Texas has taken significant action to correct the deficiencies.

### IV. Administrative Requirements

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of today's action may be filed in the United States Court of Appeals for the appropriate circuit by March 8, 2002.

Dated: December 20, 2001.

**Gregg A. Cooke,**

*Regional Administrator, Region 6.*

[FR Doc. 02–298 Filed 1–4–02; 8:45 am]

**BILLING CODE 6560–50–P**

[16] Texas' definition of ''federally enforceable'' in 30 TAC 101.1(31) also supports this conclusion. Federally enforceable is defined as ''all limitations and conditions which are enforceable by the EPA administrator, including those requirements developed under 40 CFR parts 60 and 61, requirements within any applicable state implementation plan (SIP), any permit requirements established under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under the approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.''

[17] Seitz and Van Heuvelen, *Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit* (January 22, 1996), and Stein, *Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules and General Permits* (January 25, 1995)

[18] Stein, *Guidance on Enforceability Requirements for Limits Potential to Emit through SIP and § 112 Rules and General Permits* at 6–8.

[19] The EPA is developing an Order of Sanctions rule to determine which sanction applies at the end of this 18 month period.

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7126–4]**

## Sole Source Aquifer Determination for Glen Canyon Aquifer System, Moab, Utah

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

**ACTION:** Notice of final determination.

**SUMMARY:** Pursuant to section 1424(e) of the Safe Drinking Water Act, the Acting Regional Administrator of the U.S. Environmental Protection Agency (EPA) in Region VIII has determined that the Glen Canyon Aquifer System at Moab, Utah and the immediately adjacent recharge area is the sole or principal source of drinking water for the area. The area is located in southeast Utah extending from the City of Moab, southeast, encompassing approximately 76,000 acres in Townships 25 through 28 South and Ranges 21 through 24 East

SLB&M. The area is irregularly shaped with maximum dimensions of about 22 miles from southeast to northwest and approximately 9 miles from southwest to northeast. The entire area is within Grand County, Utah. No viable alternative sources of drinking water with sufficient available supply exist within the area for which this application for sole source designation has been submitted. If this aquifer becomes contaminated, a significant hazard to public health would occur.

The boundaries of the designated area have been reviewed and approved by EPA. As a result of this action, federal financially assisted projects constructed in the approximately 119 square mile area mentioned above will be subject to EPA review to ensure that these projects are designed and constructed in a manner which does not create a significant hazard to public health. For the purposes of this designation the Aquifer Service Area and the Project Review Area are the same as the Designated Area.

**DATES:** This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Mountain Standard Time on January 7, 2002.

**ADDRESSEES:** The data upon which these findings are based, and a map of the designated area are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, CO 80202–2466 or the Moab City Library, 25 South 100 East, Moab Utah 84523.

**FOR FURTHER INFORMATION CONTACT:** William J. Monheiser, Regional Sole Source Aquifer Coordinator, Ground Water Program, 8P-W-GW, USEPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, Phone: 303.312.6271, Fax: 303.312.7084, E-mail: *monheiser.william@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300f, 300h–3(e), Public Law 93–523 as amended, the Acting Regional Administrator of the U.S. Environmental Protection Agency, Region 8 has determined that the Glen Canyon Aquifer System is the sole or principal source of drinking water for the Moab area of southeast Utah described above. Pursuant to section 1424(e), federal financially assisted projects constructed anywhere in the Sole Source Aquifer area described above will be subject to EPA review.

## I. Background

Section 1424(e) of the Safe Drinking Water Act states:

> ''If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal financial assistance may, if authorized under another provision of the law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.''

Effective March 9, 1987, authority to make a Sole Source Aquifer Designation was delegated to the U.S. EPA Regional Administrators.

On May 7, 2001 a petition was received from the City of Moab, 115 West 200 South, Moab Utah 84532, requesting that EPA designate the ground water resources of the Glen Canyon Aquifer System near the City of Moab as a Sole Source Aquifer. In response to this petition, EPA published a notice of a Public Meeting in the Times-Independent, a newspaper of general circulation in the Moab area. This notice announced receipt of the petition and requested public comment in writing or oral comments at the public meeting held August 14, 2001 and for a 34 day comment period following the meeting. Comments received by mail, telephone, Fax and e-Mail were also accepted. The public comment period extended from August 14, 2001 to September 17, 2001.

Subsequently, EPA determined that the petition is both administratively and technically complete and adequate.

## II. Basis for Determination

Among the factors considered by the Regional Administrator for designation of a Sole Source Aquifer under section 1424(e) are: (1) Whether the aquifer is the area's sole or principal source of drinking water, (2) if the designated area has been adequately delineated and, (3) whether contamination of the aquifer would create a significant hazard to public health.

On the basis of information available to EPA, the Regional Administrator has made the following findings of fact, which are the basis for this determination:

1. The Glen Canyon Aquifer System serves as the ''sole source'' of drinking water for approximately 6000 permanent residents within the City of Moab. Most domestic wells and stock wells in the area derive their water from the shallow valley fill aquifer and are not affected by this action. There is no unappropriated alternative drinking water source or combination of sources which could provide fifty percent or more of the drinking water to the designated area, nor is there any projected future alternative source capable of supplying the area's drinking water needs at an economical cost.

2. Although the Glen Canyon Aquifer System underlies much of southeast Utah, in the Moab area the aquifer is of very high quality, able to be used as a drinking water source with the minimal treatment required by the State of Utah. This constitutes a limited resource in this immediate area that if contaminated would create a significant hazard to public health and result in significant economic, social and environmental costs. Potential sources of contamination include: (1) Petroleum, mineral exploration, and geophysical drilling, (2) poorly designed development (3) accidental spills along roadways, (4) abandoned but unplugged petroleum, mineral and geophysical wells, tunnels and (5) non-sustainable agricultural and forestry practices.

3. The City of Moab's petition and supporting documentation have appropriately delineated the boundaries of the subject aquifer.

## III. Description of the Petitioned Aquifer

The designated area of the Glen Canyon Aquifer System encompasses about 76,000 acres in an irregularly shape area approximately 22 miles long by 9 miles wide. Drinking water production is from one developed spring from the Wingate Sandstone and three developed springs and five drilled wells from the Navajo Sandstone. The lower Jurassic Wingate Sandstone, overlain by the lower Jurassic Kayenta Sandstone, overlain by the lower Jurassic Navajo Sandstone comprise the approximately 800 feet thick Glen Canyon Aquifer System. Water production is primarily due to fracture flow. Combined production of the water system can be greater than 4,775 gallons per minute with 3,000,000 gallons of storage. The boundaries of the aquifer were determined by hydrogeologic mapping, which is the area interpreted to contribute water to the springs and well. The aquifer is exposed at the surface within its service area and considered to be moderately to very vulnerable.

**IV. Information Utilized in Determination**

The information utilized in this determination includes the petition from the City of Moab, review of available literature, and the results of ground water investigations conducted by the State on the ground water resources of the area. These data are available to the public and may be inspected during normal business hours at EPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466 or at the Moab City Library, 25 South 100 East, Moab, Utah, 84532.

**V. Project Review**

EPA, Region VIII, will work with the Federal Agencies that may, in the future, provide financial assistance to projects in the designated area. Interagency procedures will be developed in which EPA will be notified of proposed funding commitments for projects which could contaminate the aquifer. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate. Should EPA determine that a project may contaminate the aquifer, so as to create a significant hazard to public health, no commitment for federal assistance may be entered into. However, a commitment for federal assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not contaminate the aquifer.

Although the project review process cannot be delegated to state or local agencies, the EPA will rely upon any existing or future state and local control mechanisms, to the maximum extent possible, in protecting the ground-water quality of the aquifer. Included in the review of any federal financially assisted project will be coordination with local agencies. Their comments will be given full consideration, and the Federal review process will attempt to complement and support state and local ground water quality protection mechanisms.

**VI. Public Comments**

In response to the Public Notice and Public Meeting, a detailed discussion of all questions, a transcript of the public meeting as well as all written comments can be found in the Administrative Record and may be inspected during normal business hours at EPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Participants at the Public Meeting voiced unanimous support for designation. Of the 52 written comments received all were supportive of designation except for one. All comments are addressed in EPA's Responsiveness Summary, which is part of the Administrative record.

No additional data were presented during the public comment period regarding aquifer characteristics, boundary delineation or potential errors of fact presented in the petition.

**VII. Economic and Regulatory Impact**

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that this designation will not have a significant impact on a substantial number of small entities. For purposes of this Certification, ''small entity'' shall have the same meaning as given in section 601 of the RFA. This action is only applicable to projects with the potential to impact the Glen Canyon Aquifer System Sole Source Aquifer as designated.

The only affected entities will be those businesses, organizations or governmental jurisdictions that request federal financial assistance for projects which have the potential for contaminating the Sole Source Aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact of today's action will not be significant. Many projects subject to this review will be preceded by a ground water impact assessment required pursuant to other federal laws, such as the National Environmental Policy Act (NEPA) as amended 42 U.S.C. 4321, *et seq.* Integration of those related review procedures with sole source aquifer review will allow EPA and other federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effects on those small entities which are affected. Finally, today's action does not prevent grants of federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12866, EPA must judge whether a regulation is ''major'' and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, will not cause any major increase in costs or prices, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only affects the Glen Canyon Aquifer System in Grand County, Utah. It provides an additional review of ground water protection measures, incorporating state and local measures whenever possible, for only those projects which request federal financial assistance.

**VIII. Summary**

This determination affects only the Glen Canyon Aquifer System, located in Moab Utah. As a result of this designation all federal financially assisted projects proposed in the delineated area will be subject to EPA review to ensure that they do not create significant hazard to public health,

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

[FR Doc. 02–297 Filed 1–4–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7126–6]**

## Program Requirement Revisions related to the Public Water System Supervision Program for the States of Connecticut, Rhode Island, Vermont and the Commonwealth of Massachusetts

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the States of Connecticut, Rhode Island, Vermont and the Commonwealth of Massachusetts are in the process of revising their approved Public Water System Supervision Programs to meet the requirements of the Safe Drinking Water Act (SDWA).

EPA has determined that the Revised Public Water System Definitions for the State of Connecticut and the Commonwealth of Massachusetts are no less stringent than the corresponding revised Federal definition, as authorized under the Safe Drinking Water Act Amendments of 1996 and final rule provided on April 28, 1998 (63 FR 23362). Therefore, EPA intends to approve this Public Water System Supervision Program requirement for both Connecticut and Massachusetts.

The State of Connecticut has adopted drinking water regulations for Synthetic

Organic Chemicals and Inorganic Chemicals (also known as Phase II, Phase IIB, and Phase V Drinking Water Regulations) that correspond to the National Primary Drinking Water Regulations promulgated by EPA on January 30, 1991 (56 FR 3526), July 1, 1991 (56 FR 30266) and July 17, 1992 (57 FR 31776) respectively. After additional review of the submitted documentation, EPA has determined that the State program revisions for its Phase II, Phase IIB and Phase V Drinking Water Regulations are no less stringent than the corresponding Federal regulations. Therefore, EPA intends to approve these Public Water System Supervision Program requirements for Connecticut.

In addition, the State of Connecticut has adopted drinking water regulations for controlling lead and copper in drinking water that correspond to the National Primary Drinking Water Regulations promulgated on June 7, 1991 (56 FR 26460). After additional review of the submitted documentation, EPA has determined that Connecticut's Lead and Copper Rule program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA intends to approve these Public Water System Supervision Program requirements for Connecticut.

The State of Rhode Island has adopted drinking water regulations for the Phase II and Phase IIB (Synthetic Organic Chemicals and Inorganic Chemicals) Rules that correspond to the National Primary Drinking Water Regulations promulgated by EPA on January 30, 1991 (56 FR 3526) and July 1, 1991 (56 FR 30266) respectively. After review of the submitted documentation, EPA has determined that Rhode Island's Phase II and Phase IIB Rules are no less stringent than the corresponding Federal regulations. Therefore, EPA intends to approve these Public Water System Supervision Program requirements for Rhode Island.

The States of Rhode Island and Vermont have revised their Public Water System Supervision (PWSS) primacy programs by adopting regulations for their respective Consumer Confidence Report Rule that correspond to 40 CFR part 141, subpart O. After review of the submitted documentation, EPA has determined that Rhode Island's and Vermont's Consumer Confidence Report Rules are no less stringent than the corresponding Federal regulation. Therefore, EPA intends to approve these Public Water System Supervision Program requirements for Rhode Island and Vermont.

**DATES:** All interested parties may request a public hearing for any of the above EPA determinations. A request for a public hearing must be submitted within thirty (30) days of this **Federal Register** publication date to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by this date, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become final and effective thirty (30) days after the publication of this **Federal Register** notice. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination; (3) information that the requesting person intends to submit at such hearing; and (4) the signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

**ADDRESSES:** All documents relating to this determination are available for inspection between the hours of 8:30AM and 4:00PM, Monday through Friday, at the following office(s): U.S. Environmental Protection Agency, Office of Ecosystem Protection, One Congress Street, 11th floor, Boston, MA 02114.

For documents specific to that State/Commonwealth:

Massachusetts Department of Environmental Protection, Drinking Water Program, One Winter Street, Boston, MA 02108.

CT Department of Public Health, Water Supplies Section, 450 Capitol Avenue, P.O. Box 340308—51 WAT, Hartford, CT 06134–0308.

Rhode Island Department of Health, Office of Drinking Water Quality, 3 Capitol Hill, Cannon Building, Room 209, Providence, RI 02908–5097.

Vermont Department of Environmental Conservation, Water Supply Division, 103 South Main Street, Waterbury, VT 05676.

**FOR FURTHER INFORMATION CONTACT:** Barbara McGonagle, Office of Ecosystem Protection (telephone 617–918–1608).

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 1401 and Section 1413 (U.S.C. 300g–2) of the Safe Drinking Water Act, as amended (1996), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: December 19, 2001.

**Robert W. Varney,**

*Regional Administrator, EPA-New England.*

[FR Doc. 02–296 Filed 1–4–02; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

*Title:* Community Rating System (CRS) Program—Application Worksheets and Commentary.

*Type of Information Collection:* Revision of a currently approved collection.

*OMB Number:* 3067–0195.

*Abstract:* The CRS Program establishes a system for FEMA to grade communities' floodplain management activities that exceed Federal minimum standards and to qualify for lower insurance rates. The January 2002 edition of the NFIP CRS Coordinator's Manual contains instructions for preparing the application worksheets that will be used to apply for activity points leading up to a CRS rating and commensurate flood insurance premium discounts. The schedule describes the floodplain management and insurance activities available to qualifying communities that undertake the selected additional activities that will reduce flood losses. Annually, all CRS participating communities must certify they are maintaining activities for which they receive credit.

*Affected Public:* State, Local or Tribal Government.

*Number of Respondents:* 940.

*Estimated Time per Respondent:* 29 hours.

*Estimated Total Annual Burden Hours:* 9,260.

*Frequency of Response:* Annual upate.

*Comments:* Interested persons are invited to submit written comments on the proposed information collection to

the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or e-mail *muriel.anderson@fema.gov.*

Dated: December 21, 2001.

**Muriel B. Anderson,**

*Acting Branch Chief, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate.*

[FR Doc. 02–324 Filed 1–4–02; 8:45 am]

**BILLING CODE 6718–01–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1398–DR]**

### Mississippi; Amendment No. 1 to Notice of a Major Disaster Declaration

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

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Mississippi (FEMA–1398–DR), dated December 7, 2001, and related determinations.

**EFFECTIVE DATE:** December 17, 2001.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective December 17, 2001.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 02–322 Filed 1–4–02; 8:45 am]

**BILLING CODE 6718–02–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1398–DR]**

### Mississippi; Amendment No. 2 to Notice of a Major Disaster Declaration

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

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Mississippi, (FEMA–1398–DR), dated December 7, 2001, and related determinations.

**EFFECTIVE DATE:** December 20, 2001.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Readiness, Response Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Mississippi is hereby amended to include Public Assistance and the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 7, 2001:

Benton, Coahoma, Marshall, Prentiss, Tallahatchie, and Tippah Counties for Public Assistance.

Bolivar, Humphreys, Panola, Quitman, Sunflower, and Washington Counties for Public Assistance (already designated for Individual Assistance).

Grenada, Lafayette, and Scott Counties for Individual Assistance.

Leake and Tunica Counties for Individual and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 02–323 Filed 1–4–02; 8:45 am]

**BILLING CODE 6718–02–P**

## OFFICE OF GOVERNMENT ETHICS

### Submission for OMB Review; Comment Request: Revised Public Financial Disclosure Access Customer Service Survey

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Notice.

**SUMMARY:** The Office of Government Ethics has submitted the proposed revised information collection form, the updated OGE Public Financial Disclosure Access Customer Service Survey as in this notice, to the Office of Management and Budget (OMB) for review and three-year extension of approval under the Paperwork Reduction Act.

**DATES:** Comments by the public and agencies on this information collection as proposed for revision should be received by February 6, 2002.

**ADDRESSES:** Comments should be sent to Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; Telephone: 202–395–7316.

**FOR FURTHER INFORMATION CONTACT:** Mary T. Donovan at the U.S. Office of Government Ethics; Telephone: 202–208–8000, ext. 1185; TDD 202–208–8025; FAX 202–208–8038. A copy of the survey may be obtained, without charge, by contacting Ms. Donovan.

**SUPPLEMENTARY INFORMATION:** The Office of Government Ethics uses the Public Financial Disclosure Access Customer Service Survey (OGE) form to assess requester satisfaction with the service provided by OGE in responding to requests by members of the public for access to copies of Standard Form (SF) 278 Executive Branch Personnel Public Financial Disclosure Reports on file with OGE. Most of the SF 278 reports available at OGE are those filed by executive branch Presidential appointees subject to Senate confirmation. Requests for access to SF 278 reports are made pursuant to the special public access provision of section 105 of the Ethics in Government Act of 1978 (the Ethics Act), as codified at 5 U.S.C. appendix 105, and procedures in 5 CFR 2634.603 of OGE's executive branchwide regulations thereunder, by completing an OGE Form 201, ''Request to Inspect or Receive Copies of SF 278 Executive Branch Personnel Public Financial Disclosure Report or Other Covered Record.''

The Office of Government Ethics distributes the survey form to requesters

along with copies of requested SF 278 reports. Those who choose to respond can complete and return the survey to OGE via the self-contained postage-paid postcards (the reverse side of the survey form, when folded, becomes a pre-addressed postcard). The purpose of this anonymous survey is to determine through customer responses how well OGE is responding to such requests and how OGE can improve its customer service in this important area. The current paperwork approval for the survey form is scheduled to expire at the end of January 2002.

On June 18, 2001, OGE issued its first round **Federal Register** notice to announce its forthcoming request to OMB for paperwork renewal of the customer service survey form. See 66 FR 32823–32824 with comments due by September 4, 2001. (OGE did not receive any comments or requests for copies of the customer service survey form). In that notice, and this one, OGE has proposed minor changes to survey question 4 to achieve greater clarity. That question currently asks whether OGE's requirement to fax or mail requests that involve more than six filers creates a problem for the requester. Based on an analysis of customer responses to question 4, OGE believes that the following statement should be added: ''SKIP this question if your request involved six or fewer filers.'' Additionally, one of the three requested responses to question 4, ''Not Applicable,'' is being changed to ''My request did not have to be faxed or mailed.''

Pursuant to the Paperwork Reduction Act, OGE has not included in its public burden estimate for the survey form the limited number of access requests filed by other Federal agencies or Federal employees. Nor has OGE included in that estimate the limited number of requests for copies of other records covered under the special Ethics Act public access provision (such as certificates of divestiture) since the survey is only sent to persons who request copies of SF 278 reports. As so defined, the total number of access survey forms for copies of SF 278s estimated to be filed annually at OGE over the next three years by members of the public (primarily by news media representatives, public interest group members and private citizens) is 50. This estimate is based on a calculation of the number of survey forms received at OGE between April 1999 and June 2001 (70 surveys). This number also takes into account the increase in the number of public requests experienced as a result of the transition and the new Presidential administration. The estimated average amount of time to read the instructions on the proposed revised customer service survey form, and to complete the form remains at three minutes. Thus, the overall estimated annual public burden for the OGE Public Financial Disclosure Access Customer Service Survey as proposed for revision will be three hours (rounded up from two and a half hours(= 50 forms × 3 minutes per form)).

In this second round notice, public comment is again invited on all aspects of OGE's customer service survey form as proposed for renewal with minor revision, including specifically views on: the accuracy of OGE's public burden estimate; the potential for enhancement of quality, utility, and clarity of the information to be collected; and the minimization of burden (including the possibility of use of information technology). The Office of Government Ethics, in consultation with OMB, will consider all comments received, which will become a matter of public record.

Approved: December 31, 2001.

**Amy L. Comstock,**

*Director, Office of Government Ethics.*

[FR Doc. 02–327 Filed 1–4–02; 8:45 am]

**BILLING CODE 6345–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at the following Web sites: *http://workplace.samhsa.gov; http://www.drugfreeworkplace.gov;* and *http://www.health.org/workplace.*

**FOR FURTHER INFORMATION CONTACT:** Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

**SUPPLEMENTARY INFORMATION:**

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc. 160 Elmgrove Park, Rochester, NY 14624, 716–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Laboratory Partners, LLC, 129 East Cedar St., Newington, CT 06111, 860–696–8115 (Formerly: Hartford Hospital Toxicology Laboratory)
Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917
Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (Formerly: Cox Medical Centers)
Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416
Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468
DrugProof, Divison of Dynacare, 543 South Hull St., Montgomery, AL 36103, 888–777–9497/334–241–0522 (Formerly: Alabama Reference Laboratories, Inc.)
DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310
Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609
Express Analytical Labs, 3405 7th Avenue, Suite 106, Marion, IA 52302, 319–377–0500
Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267
Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053 504–361–8989/800–433–3823 (Formerly: Laboratory Specialists, Inc.)
LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064 (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800–882–7272 (Formerly: Poisonlab, Inc.)
Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734
MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.)
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515
Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)
One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110/800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory
Pathology Associates Medical Laboratories, 110 West Cliff Drive, Spokane, WA 99204, 509–755–8991/800–541–7891x8991
PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–842–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728 (Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520 (Formerly: SmithKline Beecham Clinical Laboratories)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
Universal Toxicology Laboratories (Florida), LLC, 5361 NW 33rd Avenue, Fort Lauderdale, FL 33309, 954–717–0300, 800–419–7187x419 (Formerly: Integrated Regional Laboratories, Cedars Medical Center, Department of Pathology)
Universal Toxicology Laboratories, LLC, 9930 W. Highway 80, Midland, TX 79706, 915–561–8851/888–953–8851
US Army Forensic Toxicology Drug Testing Laboratory, Fort Meade, Building 2490, Wilson Street, Fort George G. Meade, MD 20755–5235, 301–677–7085

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 FR, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

**Richard Kopanda,**

*Executive Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 02–277 Filed 1–4–02; 8:45 am]

**BILLING CODE 4160–20–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Establishment of the Battle of Midway National Memorial Planning Committee

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

**ACTION:** Notice of establishment.

**SUMMARY:** We are publishing this notice in accordance with section 9a of the Federal Advisory Committee Act (Public Law 92–463). Following consultation with the General Services Administration, the Secretary of the Interior hereby establishes the Battle of Midway National Memorial Advisory Committee. The Committee will develop a strategy for a public dedication of the memorial, identify and plan for appropriate exhibits to commemorate this important event, and offer recommendations on improving visitor services on Midway Atoll National Wildlife Refuge.

**DATES:** On January 22, 2002, we will file a copy of the charter with the Committee on Environment and Public Works, United States Senate; Committee on Resources, House of Representatives; General Services Administration; and Library of Congress.

**ADDRESSES:** You may submit comments to Barbara Maxfield, Fish and Wildlife Service, P.O. Box 50617, Honolulu, Hawaii, 96850–5167, phone number (808) 541–1201.

**FOR FURTHER INFORMATION CONTACT:** Barbara Maxfield, U.S. Fish and Wildlife Service, (808) 541–1201.

**SUPPLEMENTARY INFORMATION:** The Committee will provide advice to the Secretary of the Interior through the Director, Fish and Wildlife Service on the management of the Battle of Midway National Memorial. The FY 2000 Interior Appropriations bill directed us to designate the Battle of Midway National Memorial on the Midway Atoll National Wildlife Refuge to commemorate the pivotal World War II Battle of Midway. The appropriations language also directed that we consult on a regular basis with other agencies and organizations on the management of the national memorial.

The Committee will be comprised of representatives from the Fish and Wildlife Service, National Park Service, Naval Historical Center, International Midway Memorial Foundation, Inc., Midway-Phoenix Corporation, Sixth Defense Battalion, the National Wildlife Refuge Association, Friends of Midway Atoll National Wildlife Refuge, National Trust for Historic Preservation, and a member of the Battle of Midway veterans' community. These agencies, organizations, and the veteran have demonstrated an interest and expertise in commemorating and preserving historical features associated with the Battle of Midway and reflect a balanced, cross-sectional representation of public and private sector organizations.

The Committee will function solely as an advisory body and in compliance with provisions of the Federal Advisory Committee Act.

The Certification for establishment of the committee is published below.

**Certification**

I hereby certify that the Battle of Midway National Memorial Planning Committee is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Consolidated Appropriations Act for FY 2000, the National Historic Preservation Act of 1966, as amended, and the National Wildlife Refuge System Improvement Act of 1997. The Committee will assist the Fish and Wildlife Service by providing advice and developing recommendations for the long-term management and interpretation of the Battle of Midway National Memorial.

Dated: October 11, 2001.

**Gale A. Norton,**

*Secretary of the Interior.*

[FR Doc. 02–293 Filed 1–4–02; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Information Collections for Approval Under the Paperwork Reduction Act for Neotropical Migratory Bird Conservation Act Program

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of information collection; request for comments.

**SUMMARY:** The collection of information described below has been submitted to the Office of Management and Budget (OMB) for emergency approval under the provisions of the Paperwork Reduction Act of 1995, and received OMB approval number 1018–0113 with an expiration date of 6/30/2002. Copies of the specific information collection requirements, related forms and explanatory material may be obtained by contacting the Service Information Collection Clearance Officer at the address provided below.

**DATES:** Consideration will be given to all comments received on or before March 8, 2002. OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by the above referenced date.

**ADDRESSES:** Comments and suggestions on the requirement should be sent to Rebecca Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 860—ARLSQ, 1849 C Street, NW, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at 703/358–2287, or electronically to *rmullin@fws.gov.*

**SUPPLEMENTARY INFORMATION:**

The OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). On December 19, 2001, the U.S. Fish and Wildlife Service (Service) provided information to OMB for collection of information in order to begin a grants program conducted under the Neotropical Migratory Bird Conservation Act (Public Law 106–247). The assigned OMB information collection control number is 1018–[to be assigned] , and temporary approval expires on [unknown]. The Service is requesting a three year term of approval for this information collection activity. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments are 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 estimate of the 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 the collection of information on respondents.

*Title:* Information Collection In Support of Grant Programs Authorized by the Neotropical Migratory Bird Conservation Act of 2000.

*Approval Number:* 1018–0113.

*Service Form Number(s):* N/A.

*Description and Use:* Congress passed Neotropical Migratory Bird Conservation Act (Act) in 2000, having the following purposes:

(1) To perpetuate healthy populations of neotropical migratory birds;

(2) to assist in the conservation of neotropical migratory birds by supporting conservation initiatives in the United States, Latin America, and the Caribbean; and

(3) to provide financial resources and to foster international cooperation for those initiatives.

The Act establishes ''* * * a program to provide financial assistance for projects to promote the conservation of neotropical birds.'' (Sec. 5(a)). Section 5(c) ''Project Proposals'' describes the information to be included in a project proposal.

Proposals for funding will be submitted in response to the call for proposals posted on the Division of Bird Habitat Conservation website. These proposals will be reviewed for completeness and eligibility by staff of the Division, and then distributed to the Advisory Group referenced in Sec. 7(b) of the Act. The Advisory Group will then make a recommendation to the Secretary of the Interior regarding which of these proposals should be funded. The Secretary or her designee will make the final decision. All proposals will be kept on file at the Division. Information collected under this program will be used to respond to such needs as: GPRA reporting, SF 424s, grant agreements, budget reports and justification, public and private requests for information, data provided to other programs for databases on similar programs, Congressional inquiries and reports required by the Act. This is a new collection.

In summary, information collection under these programs is required to obtain a benefit, *i.e.,* a cash reimbursable grant that is given competitively to some applicants based on eligibility and relative scale of resource values involved in the projects. The information collection is subject to the Paperwork Reduction Act requirements for such activity, which includes soliciting comments from the general public regarding the nature and burden imposed by the collection.

*Frequency of Collection:* Once per year.

*Description of Respondents:* Individuals, businesses, not-for-profit institutions, Federal Government; and State, local and/or Tribal governments.

*Estimated Completion Time:* The reporting burden, or time involved in writing a project proposal, is estimated to be 40 hours.

*Number of Respondents:* It is estimated that 30 proposals will be submitted each year.

Dated: January 2, 2002.

**Rebecca A. Mullin,**

*Information Collection Officer, U.S. Fish and Wildlife Service.*

[FR Doc. 02–294 Filed 1–4–02; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act (PRA)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Information collection change approval—Boating Infrastructure Grant Program Survey.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) submitted the collection of information requirement described below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (PRA). A copy of this information collection is included in this notice. You may obtain additional copies of the collection requirement, related survey and explanatory material by contacting the Service's Information Collection Clearance Officer at the phone number listed below.

**DATES:** Consideration will be given to all comments received on or before February 6, 2002. OMB has up to 60 days to approve or disapprove information collections but may respond after 30 days.

**ADDRESSES:** Interested parties should send comments and suggestions on the requirement to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Interior Desk Officer (1018–0106), New Executive Office Building, 725 17th Street, NW., Washington, DC 20503 and they should send a copy of the comments to: Rebecca A. Mullin, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203, (703) 358–2278 or *Rebecca_Mullin@fws.gov* E-mail.

**FOR FURTHER INFORMATION CONTACT:** Michael Vandeford, (703) 358–2033, fax (703) 358–1837, or *Michael_Vanderford@fws.gov* E-mail.

**SUPPLEMENTARY INFORMATION:** *General:* Comments regarding this survey were received as a result of the survey being published in the **Federal Register**, Volume 65, Number 206, pages 63606–63617, October 24, 2000. We received 54 comments from 3 respondents. Most comments pertained to minor textual changes to improve clarity, while others addressed specific questions, use of survey data, and implementation of the survey. Comments regarding textual changes were used in revising the survey to the extent possible.

*Written Comments:*

*Issue 1:* One response suggested that Part A, question 12 and Part B, question 9 fail to address interstate boating facility needs.

*Response:* The survey instrument is designed to allow States to assess their boating access needs. The U.S. Fish and Wildlife Service will use the results of the State surveys to create a comprehensive national boating access needs assessment to address interstate access needs.

*Issue 2:* We received one comment suggesting that Part A, question 18 requesting subjective comments pertaining to recreational boating was too broad and should be limited to transient boating facilities. Similar comments were made regarding Part B, question 13; Part C, question 12; and Part D, question 23.

*Response:* Reducing subjective comments to only those concerning transient facilities is too limiting. However, we do agree that subjective comments must remain focused on facility issues. In response to this comment, we added the word ''facilities'' after ''recreational boating'' in the questions.

*Issue 3:* Two comments identified faulty numbering of questions in the survey instrument.

*Response:* We revised the numbering of the questions in all Parts of the survey.

*Issue 4:* One respondent suggested an answer for Part B, question 10 be revised to include portable toilet dump

stations instead of waste pumpouts due to the frequent use of portable toilets by operators of boats under 26 feet in length.

*Response:* We agree in part with this comment and revised the available answer in Part A, question 13 and Part B, question 10 to read as follows, ''pumpout/portable toilet dump stations.'' Similar changes were also made to Part C and Part D.

*Issue 5:* A comment regarding Part B, question 11 suggested the answers be revised to include launch lanes and parking areas as these are facilities desired by operators of trailerable boats. A similar comment was made regarding Part C, question 16.

*Response:* Part B, question 10 specifically addresses the satisfaction levels of boaters regarding launch ramps and parking areas. Part C, question 16 specifically addresses parking areas, restrooms, and launch areas. No changes were made in response to these comments.

*Issue 6:* Two comments suggested the respondent identifying question in Part C be revised to clearly distinguish between public and private facilities.

*Response:* We agree and revised the answer set to clearly identify public and private providers.

*Issue 7:* A comment suggested revising Part C, question 4 to focus on transient slips.

*Response:* We disagree as the survey was designed to assess the needs for all recreational boating facilities. We did not change Part C, question 4 in response to this comment.

*Issue 8:* One respondent was unclear about which questions in Part A refer to boats greater than or equal to 26 feet in length. The same comment was made regarding Parts B, C, and D.

*Response:* We agree and revised instructions in each Part for clarification.

*Issue 9:* A respondent suggested adding logistical instructions to Part A questions 1–3, Part B questions 1–3, and Part C question 1 informing respondents how to return completed surveys to the appropriate location.

*Response:* Each State agency administering the survey is responsible for providing logistical instructions to ensure the proper return of completed surveys. However, in response to this comment, we added instructions directing the respondents to return completed surveys.

*Issue 10:* One respondent suggested altering the available answers in Part A, question 5 and Part B, question 5 to clarify where the vessels are kept during the boating season.

*Response:* We agree and changed the answer sets in each question to clearly identify that the general location is the desired response.

*Issue 11:* One comment suggested that the words ''transient tie-up facilities'' in Part A, question 11 are jargon and require definition.

*Response:* The meaning of ''transient tie-up facilities'' is defined in the Boating Infrastructure Grant Program final rule which appeared in the **Federal Register** on January 18, 2001, Volume 66, Number 12, pages 5282–5294. No change was made in response to this comment.

*Issue 12:* One comment suggested Part C and Part D would be easier to complete if respondents were able to focus on answering questions pertaining to each facility managed, as opposed to answering questions for all facilities before continuing to the next question.

*Response:* During the revision of this survey, developers discussed this option. In order to keep the survey as short as possible, the current format was selected with the understanding that States administering the survey have substantial flexibility regarding presentation of the survey to potential respondents. No change was made in response to this comment.

*Title:* Boating Infrastructure Grant Program Survey.

*OMB Control Number:* 1018–0106 expires 3/31/2003. 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.

*Service Form Number:* 3–2187.

*Frequency of Collection:* One-time.

*Description and Use:* The Service administers the Boating Infrastructure Grant Program authorized by the Federal Aid in Sport Fish Restoration Act. Under the Act, as amended, the Service is responsible for development of a survey to assess the needs for facilities for recreational boaters. This survey was previously approved under the referenced OMB control number. This request is for approval of changes to the previously approved survey instrument. These changes include dropping certain questions, rewording others for clarity, and reformatting the questionnaire, making it easier to understand and use. These changes reduced the hourly burden on respondents by 20,277 hours. Changes are discussed in detail in this notice under Supplementary Information.

*Additional Information:* The Service submitted the following information collection requirement to OMB for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are 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.

*Description of Respondents:* Boaters and/or boating access providers in the States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa.

*Completion Time and Response Estimate:*

| Type of information | Number of interviews* | Average time required per response (minutes) | Annual burden hours |
|---|---|---|---|
| Boat owners: Part A | 11,200 | 12 | 2,240 |
| Boat owners: Part B | 28,000 | 12 | 5,600 |
| Boating access providers: Part C | 8,400 | 20 | 2,800 |
| Boating access providers: Part D | 4,000 | 20 | 1,333 |
| Total | ..... | ..... | 11,973 |

*These numbers are not additive since some of the boaters will fill out both Parts A and B, and most of the providers will fill out both Parts C and D.

The gathering of information from applicants to assess recreational boating facility needs is authorized under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777k). Information from this survey will be used to assess the needs for recreational boating facilities. Your participation in completing this form is not required to obtain benefits under the Boating Infrastructure Grant Program. Once submitted, this survey becomes public information and is not protected under the Privacy Act. The public reporting burden for this survey is estimated at 10 to 25 minutes per response, including time for gathering information and completing. Direct comments to the Service Information Collection Clearance Officer, (1018–0106), U.S. Fish and Wildlife Service, MS 222–ARLSQ; 1849 C Street N.W., Washington, D.C. 20240.

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Dated: January 2, 2002.

**Rebecca Mullin,**

*Information Collection Clearance Officer.*

**BOATING INFRASTRUCTURE GRANT PROGRAM NATIONAL FRAMEWORK**

**PART A: RECREATIONAL BOATING NEEDS ASSESSMENT QUESTIONNAIRE FOR BOATERS WITH BOATS 26 FEET OR MORE IN LENGTH**

Please answer the following questions about your boating activities in [*name of State*]. [Add comment about confidentiality if applicable under state law]

1. Do you own a boat 26 feet or more in length?

☐ Yes. ☐ No. You need not complete this questionnaire. [If this is a mail survey, please stop and return the survey]

2. Have you boated in [*name of State*] within the past 2 years?

☐ Yes. ☐ No. You need not complete this questionnaire. [If this is a mail survey, please stop and return the survey]

3. Do you boat mainly for recreation (NOT for work)?

☐ Yes. ☐ No. You need not complete this questionnaire. [If this is a mail survey, please stop and return the survey]

4. What type of boat or boats do you own? (Please check all that apply)

☐ Cabin cruiser (gasoline) ☐ Cabin cruiser (diesel) ☐ Sailboat
Houseboat/pontoon boat ☐ Open motor boat ☐ Trawler
☐ Other (please specify)____

FOR QUESTIONS 5–9 PLEASE REFER TO THE BOAT OVER 26 FEET IN LENGTH THAT YOU USE THE MOST

5. Where do you usually keep this boat during the boating season? (Please check the one that MOST applies. If you keep your boat in a location other than your home please name the specific site)

| | |
|---|---|
| ☐ At waterfront property, which is your permanent residence ..... | State_____ |
| ☐ At waterfront property, which is your seasonal residence ..... | State_____ |
| ☐ On the water at a public or private marina ..... | State/City/town:_____<br>Site name:_____ |
| ☐ At a 'dry-stack' marina or other storage facility ..... | State/City/town:_____<br>Site name:_____ |
| ☐ Other (specify)_____ ..... | State/City/town:_____<br>Site name:_____ |

6. How many days a year do you use this boat to go boating in [name of state]? (Please check the one that MOST applies.)

☐ 1 to 10 days a year
☐ 11 to 20 days a year
☐ 21 to 50 days a year
☐ More than 50 days a year

7. How long is typical boating trip for you in [name of state]? (Please check the one that MOST applies.)

☐ Day trip or weekend
☐ Extended trip longer than one weekend

8. Where do you go in this boat? (Please check the one that MOST applies.)

☐ One the water body in which it is kept
☐ Connected waters up to 25 miles from 'home port'
☐ Connected waters 26 to 50 miles from 'home port'
☐ To destinations over 50 miles

9. What is the average distance that you travel in your boat on a day of boating in [name of state]?

☐_____miles.

10. Do you think there are enough transient tie-up facilities in [*name of State*]? (Please rate on a scale of 1 to 5.)

| No, need a lot more | No, need a few more | The right amount | Yes, more than enough | Yes, there are too many |
|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 |

11. Please identify 3 areas in [*name of State*] where you see the greatest need for more transient tie-up facilities. (Please be as specific as possible and name the country and city or town, and the area name or location.)

| Site name | County and city or town | Area name and/or location (such as lake, slough, bay, harbor, section of river or other) |
|---|---|---|
| Area #1<br>Area #2<br>Area #3 | | |

12. Thinking about the boating area(s) you just mentioned in Question #11, what kinds of features do you think are needed at each? (Please check all that apply.)

| | Area #1 | Area #2 | Area #3 |
|---|---|---|---|
| Transient slips or tie-up facilities | ☐ | ☐ | ☐ |
| Transient moorings | ☐ | ☐ | ☐ |
| Fuel (gasoline) | ☐ | ☐ | ☐ |
| Fuel (diesel) | ☐ | ☐ | ☐ |
| Utilities (electric, water, phone) | ☐ | ☐ | ☐ |
| Restrooms | ☐ | ☐ | ☐ |
| Sewage pumpout/portable toilet dump stations | ☐ | ☐ | ☐ |
| Other (specify) | | | |
| Other (specify) | | | |
| Other (specify) | | | |

13. Why don't you boat more often in [*name of State*]? Please rate how the following factors may impact your decision NOT to boat in [*name of State*] more frequently. (Please check one for each factor listed.)

| | No impact | Low impact | Medium impact | High impact | Does not apply |
|---|---|---|---|---|---|
| Too few transient slips, moorings, or tie-up facilities | ☐ | ☐ | ☐ | ☐ | ☐ |
| Inaccessibility due to shallow water/channel depths | ☐ | ☐ | ☐ | ☐ | ☐ |
| Lack of information about transient tie-up facility locations | ☐ | ☐ | ☐ | ☐ | ☐ |
| Inadequate facilities (fuel, utilities, restrooms) | ☐ | ☐ | ☐ | ☐ | ☐ |
| Congested waterways (boats traffic) | ☐ | ☐ | ☐ | ☐ | ☐ |
| Poor water quality for fishing | ☐ | ☐ | ☐ | ☐ | ☐ |
| Poor water quality for swimming | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ |

14. How do you reach the shoreline from your boat? (Please check ALL that apply.)

☐ Via shore slip or other transient tie-up facility
☐ Via a dinghy from a moored or anchored position
☐ Pulling onto shore or close to shore
☐ Other _____

15. If you checked MORE THAN ONE option in Question #14 above, which do you prefer? (Please check the one that you MOST prefer.)

☐ Via shore-side slip or other transient tie-up facility
☐ Via a dinghy from a moored or anchored position
☐ Pulling onto shore or close to shore
☐ Other _____

16. What is the minimum water depth in feet required for safe operation of the boat you use the most?

☐ _____ feet.

17. Please use the space below to make any other comments or suggestions about recreational boating facilities in your State.

_____

_____

_____

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and the Privacy Act of 1974 (U.S.C. 552), please be advised that:

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**PART B: BOATING NEEDS ASSESSMENT QUESTIONNAIRE FOR BOATERS WITH BOATS UNDER 26 FEET IN LENGTH**

Please answer the following questions about your boating activities in [*name of State*]. [Add comment about confidentiality if applicable under state law]

1. Do you own a boat under 26 feet in length?

☐ Yes. ☐ No. You need not complete this questionnaire. [If this is mail survey, please stop and return the survey]

2. Have you boated in [*name of State*] within the past 2 years?

☐ Yes. ☐ No. You need not complete this questionnaire. [If this is a mail survey, please stop and return the survey]

3. Do you boat mainly for recreation (NOT for work)?

☐ Yes. ☐ No. You need not complete this questionnaire. [If this is a mail survey, please stop and return the survey]

4. What type of boat or boats do you own? (Please check all that apply.)

☐ Cabin cruiser (gasoline)
☐ Cabin cruiser (diesel)
☐ Houseboat/pontoon boat
☐ Sailboat
☐ Bass boat/jon boat
☐ Open motor boat
☐ Personal water craft
☐ Jet drive boat
☐ Unpowered rowboat
☐ Canoe/kayak
☐ Sailboard
☐ Inflatable boat/raft
☐ Other (please specify) _____

FOR QUESTIONS 5–7 PLEASE REFER TO THE BOAT UNDER 26 FEET IN LENGTH THAT YOU USE THE MOST

5. Where do you usually keep this boat during the boating season? (Please check the one that MOST applies. If you keep your boat in a location other than your home, please name the specific site.)

☐ Public or private marina
☐ At home on a trailer
☐ In a rented dry storage area (that is not a marina)
☐ Waterfront property that you own, rent, or lease
☐ Other _____

6. How do you put your boat in the water in [name of State]?

☐ I use a trailer ☐ I carry it down to the water

7. How many miles (one way) do you typically transport the boat over land to go boating in [name of State]?

☐ _____

8. Please identify 3 [*name of State*] areas where you see the greatest need for more boat access sites. (Please be as specific as possible and name the county and city or town, and the area name or location).

| Area | County and city or town | Area name and/or location (such as lake, slough, bay, harbor, section of river or other) |
|---|---|---|
| Area #1<br>Area #2<br>Area #3 | | |

9. Thinking about the boating area(s) you just mentioned in Question #8, what kinds of support features do you think are needed at each? (Please check all that apply.)

| | Area #1 | Area #2 | Area #3 |
|---|---|---|---|
| Carry-down walkway to the water's edge | ☐ | ☐ | ☐ |
| Boarding floats | ☐ | ☐ | ☐ |
| Launch ramp | ☐ | ☐ | ☐ |
| Parking | ☐ | ☐ | ☐ |
| Sewage pumpout/portable toilet dump stations | ☐ | ☐ | ☐ |
| Restrooms/showers | ☐ | ☐ | ☐ |
| Other (specify) | | | |
| Other (specify) | | | |
| Other (specify) | | | |

10. Please rate how the following factors may impact your decision NOT to boat in [name of State] more frequently. (Please check one for each factor listed.)

| | No impact | Low impact | Medium impact | High impact | Does not apply |
|---|---|---|---|---|---|
| Too few boat access sites | ☐ | ☐ | ☐ | ☐ | ☐ |

| | No impact | Low impact | Medium impact | High impact | Does not apply |
|---|---|---|---|---|---|
| Lack of information about access site locations | ☐ | ☐ | ☐ | ☐ | ☐ |
| Inadequate facilities (fuel, utilities, restrooms) | ☐ | ☐ | ☐ | ☐ | ☐ |
| Congested waterways (boat traffic) | ☐ | ☐ | ☐ | ☐ | ☐ |
| Poor water quality for fishing | ☐ | ☐ | ☐ | ☐ | ☐ |
| Poor water quality for swimming | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ |

11. Do you think there are enough boat access sites in [*state name*]? (Please rate on a scale of 1 to 5.)

| No, need a lot more | No, need a few more | The right amount | Yes, more than enough | Yes, there are too many |
|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 |

12. Please use the space below to make any other comments or suggestions about recreational boating facilities in your State.

_____

_____

_____

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**PART C**

If you operate a marina or other tie-up facility in [name of State] that serves boats 26 feet or more in length, please answer the following questions. If you do not operate facilities for boats 26 feet or more in length but do operate an access site that services trailerable or car top boats under 26 feet in length, please go to Part D below.

IF YOU OPERATE MORE THAN 5 FACILITIES PLEASE ESTIMATE RESPONSES FOR ALL YOUR FACILITIES COMBINED. PLACE ANSWERS UNDER FACILITY #1.

**RECREATIONAL BOATING NEEDS ASSESSMENT QUESTIONNAIRE FOR PROVIDERS**

Please answer the following questions about your boating facility or access site in [name of State]. [Add comment about confidentiality if applicable under state law]

1. Are you a public or private boating facilities provider in [name of State]?

☐ Private provider available to the public (Non-government agency)

☐ Private provider unavailable to the public (You need not complete this questionnaire. If this is a mail survey, please stop and return the survey)

☐ Public provider (Government agency—includes private leases on public land)

☐ Neither (You need not complete this questionnaire. If this is a mail survey, please stop and return the survey)

2. How many boating facilities for boats over 26 feet do you operate in [name of State]?

☐_____facility(ies)

3. Please list the boating facility or facilities in [name of State] that you operate or manage for boats 26 feet or more in length.

| | Name of facility (marina, courtesy dock, etc) | County/city or town | Area (Lake, cove, slough, bay, harbor or section of river) | Latitude (longitude or GPS |
|---|---|---|---|---|
| Facility #1: | | | | |
| Facility #2: | | | | |
| Facility #3: | | | | |
| Facility #4: | | | | |
| Facility #5: | | | | |

4. For each facility listed in Question #3, indicate the requirements for boater use. (Check all that apply. List facilities in same order as Question #3.)

| | None (first come first served) | Club membership required | Reservations required | Fee charged |
|---|---|---|---|---|
| Facility #1 | ☐ | ☐ | ☐ | ☐ |
| Facility #2 | ☐ | ☐ | ☐ | ☐ |
| Facility #3 | ☐ | ☐ | ☐ | ☐ |
| Facility #4 | ☐ | ☐ | ☐ | ☐ |
| Facility #5 | ☐ | ☐ | ☐ | ☐ |

5. For each facility listed in Question #3, estimate the number of transient tie-up slips, permanent tie-up slips, transient moorings and permanent moorings. (List facilities in same order as Question #3.)

| | Number of transient slips/ tie-ups | Number of permanent slips/tie-ups | Number of transient moorings | Number of permanent moorings |
|---|---|---|---|---|
| Facility #1: | | | | |
| Facility #2: | | | | |
| Facility #3: | | | | |
| Facility #4: | | | | |
| Facility #5: | | | | |

6. For each facility listed in Question #3, identify the types of support features available at the facilities. (Check all that apply. List facilities in same order as Question #3.)

| | Gas fuel | Diesel fuel | Restrooms | Sewage pumpout/dump stations | Electricity | Water | Telephones |
|---|---|---|---|---|---|---|---|
| Facility #1 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Facility #2 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Facility #3 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Facility #4 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Facility #5 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

7. For each facility that you listed in Question #3, what repairs, replacements, expansions, or additions do you think are needed or you would do if you could? (Check all that apply. List facilities in same order as Question #3.)

| Facility #1 | None | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Transient slips or tie-ups | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Transient moorings | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Gasoline facilities | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Diesel fuel facilities | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Restrooms | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Pumpout/dump stations | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Electricity | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Water | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Telephone | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Oil disposal | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

| Facility #2 | None | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Transient slips or tie-ups | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Transient moorings | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Gasoline facilities | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Diesel fuel facilities | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Restrooms | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Pumpout/dump stations | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Electricity | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Water | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Telephone | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Oil disposal | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

| Facility #2 | None | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Other (specify) ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

| Facility #3 | None | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Transient slips or tie-ups ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Transient moorings ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Gasoline facilities ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Diesel fuel facilities ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Restrooms ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Pumpout/dump stations ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Electricity ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Water ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Telephone ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Oil disposal ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

| Facility #4 | None | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Transient slips or tie-ups ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Transient moorings ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Gasoline facilities ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Diesel fuel facilities ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Restrooms ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Pumpout/dump stations ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Electricity ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Water ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Telephone ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Oil disposal ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

| Facility #5 | None | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Transient slips or tie-ups ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Transient moorings ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Gasoline facilities ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Diesel fuel facilities ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Restrooms ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Pumpout/dump stations ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Electricity ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Water ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Telephone ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Oil disposal ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

8. For all of your facilities combined in [name of State], please identify how boaters know about your facilities. (Check all that apply).

| Paid advertising | State publications | Chamber of commerce | World wide web/Internet | Other (specify) | Other (specify) |
|---|---|---|---|---|---|
| ☐ | ☐ | ☐ | ☐ | | |

9. Below is a list of reasons why boaters may use the facilities you listed in Question #3. Why do you think the public uses each facility? (Check all that apply for each facility. List facilities in same order as Question #3.

| | Close to population centers | Good boating waters | Good support services (slips, fuel, restrooms, pumpouts, etc.) | Reasonable cost | Swimming opportunities | Fishing opportunities | Other (specify) |
|---|---|---|---|---|---|---|---|
| Facility #1 ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | |
| Facility #2 ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | |
| Facility #3 ..... | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | |

| | Close to population centers | Good boating waters | Good support services (slips, fuel, restrooms, pumpouts, etc.) | Reasonable cost | Swimming opportunities | Fishing opportunities | Other (specify) |
|---|---|---|---|---|---|---|---|
| Facility #4 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | |
| Facility #5 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | |

10. Please rate the overall condition of the facility(ies) you listed in Question $3. (Please check one for each facility. List facilities in same order as Question #3.)

| | Poor (requires upgrade now) | Fair (will require upgrade within the next 2 to 5 years) | Good (will require upgrade within 6 to 10 years) | Excellent (no improvements needed for more than 10 years) |
|---|---|---|---|---|
| Facility #1 | ☐ | ☐ | ☐ | ☐ |
| Facility #2 | ☐ | ☐ | ☐ | ☐ |
| Facility #3 | ☐ | ☐ | ☐ | ☐ |
| Facility #4 | ☐ | ☐ | ☐ | ☐ |
| Facility #5 | ☐ | ☐ | ☐ | ☐ |

11. Do you think there are enough boat tie-up facilities in [name of State]?

☐ Yes ☐ No

12. If public funding sources were available for facility repair, improvement, expansion, or additions, would you be interested?

☐ Yes ☐ No

13. Please provide any comments about recreational boating facilities not covered in this section.

_____

_____

_____

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and Privacy Act of 1974 (U.S.C. 552), please be advised that:

The gathering of information from applicants to assess recreational boating facility needs is authorized under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777k). Information from this survey will be used to assess the needs for recreational boating facilities. Your participation in completing this form is not required to obtain benefits under the Boating Infrastructure Grant Program. Once submitted, this survey becomes public information and is not protected under the Privacy Act. The public reporting burden for this survey is estimated at 10 to 25 minutes per response, including time for gathering information and completing. Direct comments to the Service Information Collection Clearance Officer, (1018–0106), U.S. Fish and Wildlife Service, MS 222–ARLSQ; 1849 C Street N.W., Washington, D.C. 20240.

An agency may not conduct and a person is not required to complete a collection of information unless a currently valid OMB control number is displayed.

**PART D**

If you operate a boating facility or access site for trailerable or car top boats under 26 feet in length, please answer the following questions.

**IF YOU OPERATE MORE THAN 5 ACCESS SITES, PLEASE ESTIMATE FOR ALL YOUR FACILITIES COMBINED, PLACE ANSWERS UNDER FACILITY #1**

14. How many boating facilities or access sites for boats under 26 feet in length do you operate in [name of State]?

__facilities or access sites

15. Please list the boating facility(ies) or access site(s) that you operate or manage in [name of State] for boats under 26 feet in length. (Please list each specific site.)

| | Site name | County/city or town | Area (lake, cove, slough, bay, harbor, or section of river) | Latitute/longitude or GPS |
|---|---|---|---|---|
| Facility #1: | | | | |
| Facility #2: | | | | |
| Facility #3: | | | | |
| Facility #4: | | | | |
| Facility #5: | | | | |

16. For each facility listed in Question #15, please indicate any requirements for boater use. (Check all that apply. List access sites in same order as Question #15.)

| | None (first come first served) | Club membership required | Reservations required | Fee charged |
|---|---|---|---|---|
| Facility #1 | ☐ | ☐ | ☐ | ☐ |
| Facility #2 | ☐ | ☐ | ☐ | ☐ |
| Facility #3 | ☐ | ☐ | ☐ | ☐ |
| Facility #4 | ☐ | ☐ | ☐ | ☐ |
| Facility #5 | ☐ | ☐ | ☐ | ☐ |

17. For each facility listed in Question #15, identify the types of support features available at each facility. (Check all that apply. List access sites in same order as Question #15).

| | Carry down paths, etc. | Launch ramps | Boarding floats | Sewage pumpout/dump stations | Parking | Restrooms |
|---|---|---|---|---|---|---|
| Facility #1 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Facility #2 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Facility #3 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Facility #4 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Facility #5 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

18. For each facility listed in Question #15, what repairs, replacements, expansions, or additions do you think are needed? (Check one for each feature. List access sites in same order as Question #15.)

| Facility #1 | None needed | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Carry-down walkway to | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Launch ramp | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Boarding floats | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Parking | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Restrooms | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Pumpout/dump stations | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

| Facility #2 | None needed | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Carry-down walkway to | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Launch ramp | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Boarding floats | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Parking | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Restrooms | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Pumpout/dump stations | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

| Facility #3 | None needed | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Carry-down walkway to | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Launch ramp | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Boarding floats | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Parking | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Restrooms | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Pumpout/dump stations | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

| Facility #4 | None needed | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Carry-down walkway to water's edge | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Launch ramp | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Boarding floats | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Parking | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Restrooms | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Pumpout/dump stations | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

| Facility #5 | None needed | Repair | Replace | Expand | Add | Does not apply |
|---|---|---|---|---|---|---|
| Carry-down walkway to | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Launch ramp | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Boarding floats | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Parking | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Restrooms | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Pumpout/dump stations | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other (specify) | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

19. For all of your facilities combined in [name of State], identify how boaters know about your facilities (Check all that apply.)

| Paid advertising | State publications | Chamber of Commerce | World wide web | Other (specify) | Other (specify) |
|---|---|---|---|---|---|
| ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

20. Below is a list of reasons why boaters may use facilities you identified in Question #15. Why do you think the public uses each facility? (Check all that apply. List access sites in same order as Question #15.)

| | Close to population centers | Good boating waters | Good support services (slips, fuel, restrooms, pumpouts, etc.) | Reasonable cost | Fishing opportunities | Swimming opportunities | Other (specify) |
|---|---|---|---|---|---|---|---|
| Facility #1 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | |
| Facility #2 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | |
| Facility #3 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | |
| Facility #4 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | |
| Facility #5 | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | |

21. Please rate the overall condition of the facility(ies) you listed in Question #15. (Check one for each facility. List access sites in same order as Question #15.)

| | Poor (requires upgrade now) | Fair (will require upgrade within the next 2 to 5 years) | Good will require upgrade within 6 to 10 years) | Excellent (no improvements needed for more than 10 years) |
|---|---|---|---|---|
| Facility #1 | ☐ | ☐ | ☐ | ☐ |
| Facility #2 | ☐ | ☐ | ☐ | ☐ |
| Facility #3 | ☐ | ☐ | ☐ | ☐ |
| Facility #4 | ☐ | ☐ | ☐ | ☐ |
| Facility #5 | ☐ | ☐ | ☐ | ☐ |

22. Do you think there are enough boating facilities or access sites in [state name]?

☐ Yes ☐ No

23. If public funding sources were available for access site repair, improvement, expansion, or additions, would you be interested?

☐ Yes ☐ No

24. Please provide any comments about recreational boating facilities or access sites not covered in this section.

_____

_____

_____

Thank you for your help! If you would like a representative of this State to contact you about any questions and concerns or if you would like additional information about facility and site development funding sources, please list your name, facility, telephone number, and best time to contact you.

Name _____

Facility _____

Telephone _____

Time _____

**Paperwork Reduction Act and the Privacy Act—Notices**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 350 1) and the Privacy Act of 1974 (U.S.C. 552), please be advised that:

1. The gathering of information of fish and wildlife is authorized by:

(a) The Sportfishing and Boating Safety Act, Title VII, Subtitle D, Section 7404 (16 U.S.C. 777g–1); and,

(b) Title 50, Part 86, of the Code of Federal Regulations.

2. Information requested in this form is purely voluntary.

3. Routine use disclosures may also be made:

(a) To the U.S. Department of Justice when related to litigation or anticipated litigation;

(b) Of information indicating a violation or potential violation of statute, regulation, rule, order or license to appropriate Federal, State, local, or foreign agencies responsible for investigation or prosecuting the violation or for enforcing or implementing the statute, rule, regulations, order or license:

(c) From the record of an individual in response to an inquiry from a Congressional office made at the request of that individual (42 FR 1903: April 11, 1977).

4. For individuals, personal information such as home address and telephone number, financial data, and

personal identifiers (social security number, birth date, etc.) will be removed prior to any release of survey results.

5. The public reporting burden for this information collection varies on the specific activity use being requested. The relevant burden for the survey is 10 to 25 minutes. This burden estimate includes time for reviewing instructions, gathering and maintaining data and completing and reviewing the forms. Direct comments regarding the burden estimate or any other aspect of the forms to the Service Information Clearance Officer, Fish and Wildlife Service, Mail Stop 222, Arlington Square, U.S. Department of the Interior, 1849 C street, NW., Washington, D.C. 20240.

**Freedom of Information Act—Notice**

For organization, businesses, or individuals operating as a business (*i.e.,* permittees not covered by the Privacy Act), we request that yuo identify any information that should be considered privileged and confidential business information to allow the Service to meet its responsibilities under FOIA. Confidential business information must be clearly marked ''Business Confidential'' at the top of the letter or page and each succeeding page, and must be accompanied by a non-confidential summary of the confidential information. The non-confidential summary and remaining documents may be made available to the public under FOIA [43 CFR 2.15(d)(1)(i)].

**Application Processing Fee**

There is no processing fee associated with this survey.

[FR Doc. 02–295 Filed 1–4–02; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Distribution of Fiscal Year 2002 Contract Support Funds

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of method of distribution and use of FY 2002 contract support funds.

**SUMMARY:** The purpose of this announcement is to issue the Bureau of Indian Affairs (BIA) administrative instructions for implementing Public Law 93–638, as amended. These administrative instructions are designed to provide BIA personnel with assistance in carrying out their responsibilities when distributing Contract Support Funds (CSF). These instructions are not regulations establishing program requirements.

**DATES:** The CSF Needs Report for ongoing/existing contracts and annual funding agreements are due on July 15, 2002. The CSF Needs Reports for new and expanded contracts and annual funding agreements are due periodically throughout the year as the need arises. All new and expanded contracts and annual funding agreements starting between October 11, 2001 and January 1, 2002, will be considered to have a January 1, 2002, start date.

**ADDRESSES:** Send the CSF Needs Report to Jim Thomas, Bureau of Indian Affairs, Division of Self-Determination Services, 1849 C Street, NW., MS–4660–MIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Jim Thomas, Chief, Division of Self-Determination Services, Telephone (202) 208–5727.

**SUPPLEMENTARY INFORMATION:** A total of $133,209,000 is available for contract support requirements (excluding construction requirements) during FY 2002. Congressional language allows the use of $130,209,000 in FY 2002 to pay costs of ongoing/existing self-determination and self-governance awards for programs under contract/compact before FY 2002 and $3,000,000 for the Indian Self-Determination Fund (ISD) to be used for new and expanded contracts/compacts. Each BIA Regional Office and the Office of Self-Governance (hereinafter office) has the responsibility for tribes located within their respective region to work with the tribes in identifying new and expanded contracts and annual funding agreements and reporting this information to the Division of Self-Determination Services as mentioned in this announcement. CSF will be added to awards made under section 102 and title IV of the Indian Self-Determination and Education Assistance Act, as amended. Awards made under section 103 of this Act will not receive CSF to meet indirect costs.

**Basis for Payment of CSF**

The BIA may only pay indirect costs attributable to programs included in the BIA's Public Law 93–638 awards. Awards by the BIA with funds originating from other agencies which have been transferred to the BIA for award under Public Law 93–638 are not eligible for CSF appropriated to the BIA. Contract support/indirect costs requirements for these awards must be met from within the amounts transferred. (One example would include funds transferred to the BIA from the Department of Transportation for roads construction.) BIA will use tribal indirect cost rates to determine the amount of CSF to be paid to contracting tribes and tribal organizations and self-governance tribes and tribal consortia. In determining legitimate indirect cost requirements each area and self-governance director should fund only those contracting or compacting tribal organizations that have an approved indirect cost rate or indirect cost proposal currently under consideration by the Office of Inspector General. In those instances where a tribe or tribal organization has more than one approved rate or a current proposal under consideration by the Office of the Inspector General, the director should use the most current rate or a pending proposal in determining the amount to award. For those tribes who are unable to negotiate an indirect cost rate because of circumstances beyond their control (i.e., which do not have the administrative capability to negotiate a rate), awarding officials may negotiate reasonable lump sum amounts with these tribes.

**Indirect Cost Computation**

The following steps must be followed by BIA personnel when computing contract support annual funding requirements:

(1) Determine total current year program funds.

(2) Subtract exclusions (See indirect cost agreements). Examples of exclusions include capital expenditures and pass through funds (those programs requiring minimal administrative effort). Exclude other agency appropriations awarded by the BIA (i.e., roads construction funds transferred from the Department of Transportation).

(3) Direct cost base (results of steps 1 and 2).

(4) Multiply indirect cost rates against base determined in step 3.

(5) Results of step 4 equals indirect costs amount at 100 percent.

(6) Multiply current year CSF funding percentage against step 5.

(7) The result of step 6—The amount of current year CSF funding to be added to contract.

**Ongoing/Existing Contracts/Annual Funding Agreements—Method of Distribution**

Each office will send CSF Needs Report to the Central Office for ongoing contracts and annual funding agreements by July 15, 2002. A final determination of contract support will be made on or about July 31, 2002. If

these reports show that $130,209,000 will not be enough to cover the entire need, this amount will be distributed pro rata, so that all contractors and compactors receive the same percentage of their reported need.

Should the amount provided for these existing contracts and annual funding agreements prove insufficient, a tribe or group of tribes may wish to reprogram funds to make up deficiencies necessary to recover full indirect costs. This tribal reprogramming authority is limited to funds from their Tribal Priority Allocation (TPA), or annual funding agreement. Congressional appropriations language does not provide authority for the BIA to reprogram funds from other Bureau programs to meet any CSF shortfalls.

For programs other than TPA, tribes are not constrained from recovering full indirect costs from within the overall program and contract support funds awarded for each program.

Each office should initially award 65 percent of required contract support to each contract/annual funding agreement meeting the criteria established below.

All contractors and self-governance tribes/consortia with either an approved indirect cost rate, current indirect cost proposal, or FY 2002 approved lump sum amount, are immediately eligible to be paid 65 percent of their need. On approximately July 31, 2002, all contractors and self-governance tribes/consortia should receive their pro rata share of all remaining CSF.

An ongoing/existing contract or annual funding agreement is defined as a BIA program operated by the tribal contractor or compactor on an ongoing basis which has been entered into before the current fiscal year. An increase or decrease in funding from year-to-year for such contracts or annual funding agreements would not affect the designation of such contracts or annual funding agreements as ongoing. An assumption of additional BIA program responsibilities would be required to trigger a change in designation.

**Indian Self-Determination Fund—New and Expanded Contracts/Compacts and Start-Up Costs**

Each office will send CSF Need Reports to the Central Office for new and expanded contracts and annual funding agreements periodically throughout the year as new contracts or annual funding agreements are awarded or existing contracts or annual funding agreements are expanded. Funds will be provided to the offices as these reports are received and will be taken from the $3,000,000. These funds will be distributed on a first-come, first-served basis at 100 percent of need using the office reports.

If the $3,000,000 is depleted, new or expanded contracts or annual funding agreements awarded after this fund has been exhausted will not be provided any CSF during this fiscal year. Requests received after this fund has been exhausted will be considered first for funding in the following year, from funds appropriated for this purpose.

The Indian Self-Determination Act defines the term start-up cost (Sec. 106(a)(5)) as follows:

Subject to paragraph (6) of section 106, during the initial year that a self-determination contract is in effect, the amount required to be paid under paragraph (2) will include start-up costs consisting of the reasonable costs that have been incurred or will be incurred on a onetime basis under the contract necessary to:

(a) Plan, prepare for, and assume operation of the program, function, service, or activity that is the subject of the contract; and,

(b) Ensure compliance with the terms of the contract and prudent management.

For specific guidance, including examples of start-up costs, see the BIA web site under Tribal Services/Self-Determination Services.

**Priority of Funding for New and Expanded Contracts/Annual Funding Agreements**

Contract support will be awarded from the ISD fund to all new and expanded contracts/annual funding agreements based on the start date of the award, and the application date, on a first-come, first-served basis. An Indian Self-Determination Fund ''applicant roster'' will be maintained, which will list, in order of priority, the name of the tribe or tribal organization, the name of the program, the start date, the application date, the amount of program funds, the program cost code(s), the amount of contract support funds required, and the date of approved indirect cost rate agreement or lump sum agreement.

''Start date'' means the date or beginning of operation of the new or expanded portion of the contract or annual funding agreement by the tribe/consortium or tribal organization. However, because the Self-Determination Act provides that contracts/annual funding agreements will be on a calendar year basis unless otherwise provided by the tribe, any start date on or before January 1 of each year will be considered a January 1 start date.

''Application date'' means the date of the request by the tribe, which includes:

(1) A tribal resolution requesting a contract or annual funding agreement;

(2) A summary of the program or portion of that to be operated by the tribe/consortium or tribal organization; and

(3) A summary identifying the source and amount of program or services funds to contracted or included in an annual funding agreement and contract support requirements.

If two tribes or tribal organizations have the same start date and application date, the next date for determination of priority will be the date the fully complete application was received by the BIA.

If all are equal, and if funds remaining in the ISD fund are not enough to fill the entire amount of each award's contract support requirement, then each will be awarded a proportionate share of its requirement and will remain on the Indian Self-Determination Fund roster in appropriate order of priority for future distributions.

New contract/annual funding agreement is defined as the initial transfer of a program, previously operated by the BIA to the tribe/consortium or tribal organization.

An expanded contract/annual funding agreement is defined as a contract/annual funding agreement which has become enlarged, during the current fiscal year through the assumption of additional programs previously performed by the BIA.

**Criteria for Determining CSF Need for Ongoing/Existing Contracts/Annual Funding Agreements**

CSF for ongoing and existing contracts/annual funding agreements will be determined using the following criteria:

(1) All TPA contracted programs or those programs included in annual funding agreements in FY 2001 and continued in FY 2002, including contracted or annual funding agreement programs moved to TPA in FY 2002.

(2) Direct program funding increases due to inflation adjustments and general budget increases.

(3) TPA programs started or expanded in FY 2002 that are a result of a change in priorities from other already contracted/annual funding agreement programs.

(4) CSF differentials associated with tribally-operated schools that receive indirect costs through the application of the administrative cost grant formula. These differentials are to be calculated by using the criteria prescribed in the Choctaw decision dated September 18,

1992, issued by the Contracting Officer, Eastern Area Office. Copies of this decision can be obtained by calling the telephone number provided in this announcement.

(5) CSF will be distributed to the Office of Self-Governance for ongoing annual funding agreements, on the same basis as regional offices.

(6) Funds available for Indian Child Welfare Act (ICWA) programs or reprogrammed from ICWA to other programs will be considered ongoing for payment of contract support costs.

(7) The use of CSF to pay prior year shortfalls is not authorized.

(8) Programs funded from sources other than those listed above that were awarded in FY 2001 and are to be awarded in FY 2002 are considered as ongoing.

This notice is published under the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

Dated: December 19, 2001.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 02–300 Filed 1–4–02; 8:45 am]

**BILLING CODE 4310–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–467]**

### Certain Canary Yellow Self-Stick Repositionable Note Products; Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 3, 2001, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Minnesota Mining and Manufacturing Company. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain canary yellow self-stick repositionable note products by reason of infringement of U.S. Trademark Registration No. 2,390,667. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order and permanent cease and desist orders.

**ADDRESSES:** The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's ADD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDI-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

**FOR FURTHER INFORMATION CONTACT:** Jeffrey R. Whieldon, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2580.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2001).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 17, 2001, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain canary yellow self-stick repositionable note products by reason of infringement of U.S. Trademark Registration No. 2,390,667, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Minnesota Mining and Manufacturing Company, 3M Center, 2501 Hudson Road, St. Paul, Minnesota 55119.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Print-Inform GmbH & Co., Borsigstr. 8, 24568 Kaltenkirchen, Germany.

Janel, S.A. de C.V., Soja 85, Col. Granjas Esmerelda, Distrito Federal CP 09810, Mexico.

(c) Jeffrey R. Whieldon, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

By order of the Commission.

Issued: December 28, 2001.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 02–195 Filed 1–4–02; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–02–001]**

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** January 10, 2002 at 2 p.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. *Agenda for future meeting:* None.
2. Minutes
3. Ratification List
4. Inv. Nos. 731–TA–986–987 (Preliminary) (Ferrovanadium from China and South Africa)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on January 10, 2002; Commissioners opinions are currently scheduled to be transmitted to the Secretary of Commerce on January 17, 2002.)
5. Inv. Nos. 701–TA–267–268 and 731–TA–304–305 (Review) (Remand) (Top-of-Stove Stainless Steel Cooking Ware from Korea and Taiwan)—briefing and vote. (The Commission is currently scheduled to transmit its view on remand to the Court of International Trade on January 25, 2002.)
6. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier announcement of this meeting was not possible.

By order of the Commission.

Issued: January 3, 2002.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 02–429 Filed 1–3–02; 1:50 pm]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree resolving the liability of Mickie E. Jarvill in *United States of America* v. *Arlington Valley Land Company, Inc., et al.,* Civil Action No. C99–1711C(M) (W.D. Wa.), was lodged with the United States District Court for the Western District of Washington on October 11, 2001.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, resulting from the unauthorized discharge of dredged or fill materials into waters of the United States at a location near Arlington, Washington (the ''Site''). The consent decree enjoins Mickie E. Jarvill from discharging dredged or fill material into waters of the United States. The consent decree further requires that Mickie E. Jarvill pay civil penalties plus interest in the amount of $90,000 over a five-year period.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: Michael J. Zevenbergen, Attorney, Environmental Defense Section, Seattle Field Office, c/o NOAA/Damage Assessment, 7600 Sand Point Way NE, Seattle, WA 98115, and should refer to *United States of America* v. *Arlington Valley Land Company, Inc., et al.,* DJ Reference No. 90–5–1–4–402.

The proposed consent decree may be examined at the Clerk's Office, United States District Court, 1010 Fifth Avenue Seattle, WA 98104.

**Letitia J. Grishaw,**

*Chief, Environmental Defense Section, Environment and Natural Resources, Division, Department of Justice.*

[FR Doc. 02–276 Filed 1–4–02; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Specialty Minerals, Inc., John J. Foley, Jr. and Dorothy K. Foley,* Civil Action No. 3:01CV1853 (RNC) (D. Conn.), was lodged with the United States District Court for the District of Connecticut on October 3, 2001. This proposed Consent Decree concerns a complaint filed by the United States against Specialty Minerals, Inc., John J. Foley, Jr. and Dorothy K. Foley, pursuant to sections 301(a) and 404 of the Clean Water Act, 33 U.S.C. 1311(a) and 1344, and imposes civil penalties against Defendant, Specialty Minerals, Inc., for the unauthorized discharge of dredged or fill material into waters of the United States located in wetlands adjacent to a tributary of Blackberry River, located in North Canaan, Connecticut.

The proposed Consent Decree requires the payment of civil penalties, in addition to the performance of onsite mitigation and partial restoration at the site of the violation.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the of publication of this notice. Please address comments to Brenda M. Green, Assistant United States Attorney, United States Attorney's Office, 157 Church Street, 23rd Floor, New Haven, Connecticut 06510 and refer to *United States* v. *Specialty Minerals, Inc., John J. Foley, Jr. and Dorothy K. Foley,* DJ#90–5–1–1–05702.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Connecticut, 141 Church Street, New Haven, Connecticut 06510.

**Brenda M. Green,**

*Assistant U.S. Attorney, U.S. Attorney's Office, 157 Church Street, 23rd Floor, New Haven, CT 06510, (203) 821–3700.*

[FR Doc. 02–275 Filed 1–4–02; 8:45 am]

**BILLING CODE 4410–15–M**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (02–001)]**

### U.S. Centennial of Flight Commission

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the U.S. Centennial of Flight Commission.

**DATES:** Wednesday, January 30, 2002, 1:00 p.m. to 5:00 p.m.

**ADDRESSES:** National Air and Space Museum, Independence Avenue, SW between 6th and 7th Streets, Directors Conference Room. Please check in at the security desk to be cleared into the building. Please call Ms. Beverly Farmarco at 202/358–1903 if you plan to attend so your name can be added to the attendees list.

**FOR FURTHER INFORMATION CONTACT:** Ms. Beverly Farmarco, Code I, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1903.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows

—Report from Carter Ryley Thomas
—Budget Discussions
—Next First Flight Centennial Federal Advisory Board Meeting
—What the Commission Wants Accomplished in FY 2002
—Centennial Partner Deliberations
—Education Program

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

**Sylvia K. Kraemer,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 02–316 Filed 1–4–02; 8:45 am]

**BILLING CODE 7510–01–P**

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Cyberinfrastructure (#10719).

*Date/Time:* Tuesday, January 22, 2002, 8 am to 5 pm PST.

*Place:* Caltech's Center for Advanced Computing Research, Pasadena, California in room 120 of the Powell-Booth Laboratory for Computational Science, and Room 1150, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, and on the Access Grid, Lucky Labrador Virtual Venue.

*Type of Meeting:* Open Meeting. The meeting will also involve the use of the Access Grid to interview witness. Persons wishing to attend the meeting at NSF should contact Richard Hilderbrandt to arrange for a visitor's pass. Persons wishing to attend the meeting at Caltech in Pasadena should contact Paul Messina for information. Persons wishing to watch the proceedings through the use of the Access Grid are invited to join the meeting in the Lucky Labrador Virtual Venue.

*Contact Persons:* Dr. Richard Hilderbrandt, Program Director, Division of Advanced Computational Infrastructure and Research, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Tel: (703) 292–7093, e-mail: *rhilderb@nsf.gov.* Paul Messina, Director, Center for Advanced Computing Research, Mail Code 158–79, 1200 E. California Blvd., California Institute of Technology, Pasadena, CA 91125. Tel: (626) 395–3907, e-mail: *messina@cacr.caltech.edu.*

*Purpose of Meeting:* To obtain testimony from expert witnesses to pertinent to the preparation of a report to the National Science Foundation concerning the broad topic of advanced cyberinfrastructure and the evaluation of the existing Partnerships for Advanced Computational Infrastructure.

*Agenda (all times PST):*

Tuesday, 22 January 2002

8–12:30 am—In-Person and Access Grid Testimony (8 people)
12:30–1:30 pm—Lunch
1:30–5 pm—In-Person and Access Grid Testimony (7 people)

Dated: January 2, 2002.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 02–289 Filed 1–4–02; 8:45 am]

**BILLING CODE 7555–01–M**

## NUCLEAR REGULATORY COMMISSION

### Sunshine Notice

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATES:** Weeks of January 7, 14, 21, 28, February 4, 11, 2002.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

*Week of January 7, 2002*

There are no meetings scheduled for the Week of January 7, 2001.

*Week of January 14, 2002—Tentative*

Tuesday, January 15, 2002.

9:30 a.m.—Briefing on Status of Nuclear Materials Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*www.nrc.gov*

*Week of January 21, 2002—Tentative*

There are no meetings scheduled for the Week of January 21, 2002.

*Week of January 28, 2002—Tentative*

Tuesday, January 29, 2002

9:30 a.m.—Briefing on Status of Nuclear Reactor Safety (Public Meeting) (Contact: Mike Case, 301–415–1134).

This meeting will be webcast live at the Web address—*www.nrc.gov*

Wednesday, January 30, 2002

9:25 a.m.—Affirmative Session (Public Meeting) (If needed)
9:30 a.m.—Briefing on Status of the Office of the Chief Information Officer (OCIO) Programs, Performance, and Plans (Public Meeting) (Contact: Jackie Silber, 301–415–7330)

This meeting will be webcast live at the Web address—*www.nrc.gov*

2:00 p.m.—Discussion of Intragovernmental Issues (Closed—Ex. 1 & 9)

*Week of February 4, 2002—Tentative*

Wednesday, February 6, 2002

9:25 a.m.—Affirmative Session (Public Meeting) (If needed)
9:30 a.m.—Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

*Week of February 11, 2002—Tentative*

There are no meetings scheduled for the Week of February 11, 2002.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

Additional Information: By a vote of 5–0 on December 27 and 28, 2001, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of (a) Private Fuel Storage (Independent Spent Fuel Storage Installation) '' Docket No. 72–22–ISFSI; Petition to Suspend Proceedings in Response to Terrorist Attacks; (b) Duke Energy Corp. (McGuire Nuclear Station, United 1 & 2; Catawba Nuclear Station, Units 1 & 2); Blue Ridge Environmental Defense League's (''BREDL's'') Petition to Dismiss Licensing Proceeding or, in the Alternative, Hold it in Abeyance (Oct. 23, 2001); and (c) Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility); Georgians Against Nuclear Energy & Nuclear Control Institute's Petition to Suspend Construction Authorization Proceeding for Proposed Plutonium Fuel (MOX) Fab Facility,'' be held on December 28, 2001, and no less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: January 3, 2002.

**David Louis Gamberoni,**

*Technical Coordinator, Office of the Secretary.*

[FR Doc. 02–405 Filed 1–3–02; 11:41 am]

**BILLING CODE 7590–01–M**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the

Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 7, 2002: Closed meetings will be held on Tuesday, January 8, and Thursday, January 10, 2002, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the closed meetings scheduled for Tuesday, January 8, 2002, and Thursday, January 10, 2002, will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Formal orders;

Amicus considerations; and

Adjudicatory matters.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 31, 2001.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 02–00333 Filed 1–2–02; 4:07 pm]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### In the Matter of WSF Corporation; Order of Suspension of Trading

January 3, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of WSF Corporation (''WSF''), a Delaware corporation headquartered in Honolulu, Hawaii. Questions have been raised about the adequacy and accuracy of publicly disseminated information because WSF has not filed its required periodic reports for any period subsequent to the quarter ended September 30, 2000. Moreover, WSF management has informed the Commission staff that WSF still has not retained a public auditor for its financial statements for the fiscal year ended December 31, 2000.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST on January 3, 2002, through 11:59 p.m. EST on January 16, 2002.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–399 Filed 1–3–02; 11:55 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45220; File No. SR–ISE–2001–33]**

### Self Regulatory Organizations; International Securities Exchange LLC; Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Revising the Original Listing Criteria for Underlying Securities in ISE Rule 502.

### I. Introduction and Description of the Proposal

On November 19, 2001, the International Securities Exchange LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend ISE Rule 502(b)(5) to provide an alternative listing requirement for underlying securities that satisfy all of the initial listing requirements in ISE Rule 502, ''Criteria for Underlying Securities,'' other than the requirement in ISE Rule 502(b)(5) that the market price per share of the underlying security be at least $7.50 per share for the majority of business days during the three calendar months preceding the date of selection. Specifically, the Exchange proposes to adopt ISE Rule 502(b)(5)(ii), which will permit the Exchange to list options on securities that satisfy all of the initial listing requirements other than the $7.50 per share requirement so long as: (1) The underlying security meets the guidelines for continued approval in ISE Rule 503, ''Withdrawal of Approval of Underlying Securities;'' (2) options on the underlying security are traded on at least one other registered national securities exchange; and (3) the average daily trading volume for the options over the last three calendar months preceding the date of selection has been at least 5,000 contracts.

The proposed rule change was published for comment in the **Federal Register** on December 6, 2001.[3] The Commission received no comments on the proposal. On December 6, 2001, the Exchange filed Amendment No. 1 to the proposed rule change with the Commission.[4] On December 31, 2001, the Exchange filed Amendment No. 2 to the proposed rule change with the Commission.[5] This order approves the proposed rule change, as amended, on an accelerated basis. In addition, the Commission is publishing notice to solicit comments on and is simultaneously approving, on an accelerated basis, Amendment No. 2 to the proposal.

### II. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder.,[7] The Commission finds specifically that the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45119 (November 30, 2001), 66 FR 63423.

[4] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 4, 2001 (''Amendment No. 1''). In Amendment No. 1, the Exchange added ''trading'' to the proposed text of ISE Rule 502(b)(5)(ii) to clarify that the requirement in the third clause of ISE Rule 502(b)(5)(ii) refers to the average daily trading volume of an option. This is a technical amendment and is not subject to notice and comment.

[5] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division, Commission, dated December 28, 2001 (''Amendment No. 2''). In Amendment No. 2, the Exchange requested that the Commission grant accelerated approval to the proposal.

[6] 15 U.S.C. 78f.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

change is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to promote investors and the public interest.

The Commission believes that the ISE's proposal should benefit investors by enhancing competition and providing investors with an additional forum for trading options that are traded on at least one other registered national securities exchange and that satisfy the other criteria in ISE Rule 502(b)(5)(ii).[9] Under the proposal, an underlying security must meet all of the requirements in ISE Rule 502 other than the $7.50 per share requirement and must meet the guidelines for continued approval under ISE Rule 503. The Commission believes that these requirements should help to ensure that options traded on the ISE are based on securities of companies that are financially sound and subject to adequate minimum standards. In addition, because ISE Rule 502(b)(5)(ii) requires that options on an underlying security trade at least one other registered national securities exchange, the proposal will not permit the trading of any additional options that are not currently traded on a registered national securities exchange.

The ISE asked the Commission to approve the proposal of an accelerated basis to allow the ISE to begin to list several actively traded option classes that currently trade on other options exchanges prior to the January 2002 expiration.[10] The Commission finds good cause for approving the proposed rule change and Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of the proposal will allow the ISE to promptly begin trading options that currently trade on other options exchanges, thereby providing investors with an additional forum for trading these options. In addition, the Commission notes that it received no comments on the proposed rule change. Amendment No. 1 strengthens the ISE's proposal by clarifying the text of ISE Rule 502(b)(5)(ii). Amendment No. 2 requests accelerated approval of the proposal and explains the ISE's reasons for requesting accelerated approval. Accordingly, the Commission finds that there is good cause, consistent with sections (6)(b)(5)A[11] and 19(b)(2) of the Act,[12] to approve the proposal and Amendment Nos. 1 and 2 on an accelerated basis.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 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 ISE. All submissions should refer to file number SR–ISE–2001–33 and should be submitted by January 28, 2002.

## IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–ISE–2001–33), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–286 Filed 1–4–02; 8:45 am]

**BILLING CODE 8010–01–M**

[8] 15 U.S.C. 78(b)(5).

[9] As noted above, ISE Rule 502(b)(5)(ii) will permit the ISE to list options on an underlying security where: (1) The underlying security meets the guidelines for continued approval in ISE Rule 503; (2) options on the underlying security are traded on at least one other registered national securities exchange; and (3) the average daily trading volume for the options over the last three calendar months preceding the date of selection has been at least 5,000 contracts.

[10] *See* Amendment No. 2, *supra* note 5.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] *ID.*

[14] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## Environmental Impact Statement: Los Angeles County, CA

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

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Los Angeles County, California.

**FOR FURTHER INFORMATION CONTACT:** Cesar Perez, Senior Transportation Engineer, Federal Highway Administration, California Division, 980 Ninth Street, Suite 400 Sacramento, CA 95814–2724, Telephone: (916) 498–5860.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an Environmental Impact Statement (EIS) on a proposal to improve Interstate Route 405 (I–405) in Los Angeles County. The proposed action involves the construction of a High Occupancy Vehicle (HOV) lane, in the northbound direction, between just south of the Interstate Route 10 (I–10) Connector and Greenleaf Street, a distance of approximately 10 miles. The proposed project may require additional ROW as well as possible entrance/exit ramp reconfigurations and/or closures. The purpose of the proposed project is considered necessary to provide continuity and connectivity in the Regional HOV system, alleviate traffic congestion, improve mobility, access, and goods movement on the I–405 freeway in the Los Angeles County area. Alternatives under consideration include:

*Alternative 1:* No Build Alternative.

*Alternative 2:* The widening of the existing facility to add a northbound HOV lane.

*Alternative 3:* The widening of the existing facility to add a northbound HOV lane and restore southbound freeway lane and shoulder widths to current design standards.

*Alternative 4:* The widening of the existing facility to provide for four HOV lanes (two each, both northbound and southbound) on an elevated viaduct, within the freeway median, throughout and project limits.

*Alternative 5:* Transit Enhancement Alternative. This would involve design features that would facilitate increased transit use in the corridor.

*Alternative 6:* Transportation Systems Management/Transportation Demand Management. These basic alternatives may have additional design variations at specific locations in response to social, economic and environmental impacts of extraordinary magnitude, which may be identified during upcoming studies and analysis. **Note:** As required by the National Environmental Policy Act (NEPA), all other reasonable alternatives will be considered. These alternatives may be refined, combined with various different alternative elements, or be removed from further consideration, as more analysis is conducted on the project alternatives.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. An agency scoping meeting will be held on January 16, 2002, at 3 pm, at the Veterans Administration 11301 Wilshire Boulevard. In addition, initial scoping meetings, for the general public, will be held on January 16, 2002, at the Veterans Administration 11301 Wilshire Boulevard, from 6 pm to 8 pm, and on January 17, 2002, at the Radisson Hotel 15433 Ventura Blvd, Sherman Oaks, from 6 pm to 8 pm. Additional public notice will be given of the time and place of these meetings.

Public meetings will be held after the draft EIS is completed. Public notice will be given of the time and place of the meetings. The draft EIS will be available for public and agency review and comment prior to the formal public hearing(s).

To ensure that the full range of issues related to the proposed routes are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the addressed provided above.

(Catalog of Federal Assistance Program Number 20.205, Highway Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Issued on: December 27, 2001.

**Cesar E. Perez,**

*Senior Transportation Engineer, Program Delivery Team-South, Sacramento, California.*

[FR Doc. 02–41 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–22–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's argument in favor of relief.

**Durbin & Greenbrier Valley Railroad, Inc.**

[Docket Number FRA–1999–5183]

The Durbin & Greenbrier Valley Railroad, Inc. (DGVR) seeks a waiver of compliance from certain provisions of the Safety Glazing Standards, 49 CFR 223.11, safety glazing requirements for existing locomotives.

DGVR stated that it has a locomotive (BL–2) which was built in 1948. The locomotive is on loan from the West Virginia State Rail Authority. This locomotive is used sporadically on track leased by DGVR's West Virginia Central Division.

DGVR requests the waiver based on the following three reasons: (1) The locomotive will be operated one to six excursions per week along 28 miles of rural and wildness track. There is no history of vandalism along this track. Most of this track passes through remote areas. Speed along the entire track is restricted under yard limit rules to no more than 15 miles per hour. There is only one overpass over the track and the overpass is a protected flood gate overpass which is continually patrolled. (2) The locomotive is a rare 1948 vintage BL–2 with the original glazing intact. Only a few of these types of engines were produced. Altering glazing on this old locomotive would change its appearance and would detract from its historic value and appeal. (3) This locomotive was originally built strictly for branch line service and it will be used exclusively in this manner.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number 1999–5183) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on December 17, 2001.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 02–308 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**Farmrail System, Incorporated**

[Docket Number FRA–2001–9998]

The Farmrail System owns and operates three passenger coaches which were built in 1954–56. These coaches are not used in regular service, but only on a limited seasonal basis primarily in conjunction with the Oklahoma Tourism and Recreation Department's resort and conference center located at Quartz Mountain State Park. The cars operate on trackage owned by the Oklahoma Department of Transportation for which Farmrail acts as lessee-operator. The excursion trains operate from a station near the entrance to Quartz Mountain State Park and run

northward around Lake Lugert through a sparsely populated area to Lone Wolf, Oklahoma, and back. Farmrail requests relief from the requirements of Title 49 Code of Federal Regulations (CFR) 223.15 *Requirements for existing passenger cars* due to the infrequent use of the cars, the planned usage for excursion service, and the cost of installing compliant glazing. The cars are former VIA Rail Canada equipment, and have a double-pane combination of 1/4-inch thick safety glass inside and plate glass outside. This glazing system remains the standard in Canada for passenger equipment, and the petitioner believes that the operation of these cars, as equipped, would not pose a safety hazard to passengers or employees.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2001–9998) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room P1–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on January 2, 2002.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 02–312 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**Kansas City Southern Railway Company (KCS)**

[Docket Number FRA–2001–9746]

The Kansas City Southern Railway Company (KCS) seeks a permanent waiver of compliance with the Railroad Safety Appliance Standards, 49 CFR part 231.27(b)(3) which states that the location of the end platform shall be ''One (1) centered on each end of car between inner ends of handholds not more than eight (8) inches above top of center sill.'' KCS has a series of 138 box cars, numbered KCS 125550 through KCS 125688, that were rebuilt in 1999. During the rebuild the end platforms were added to both ends of each car with approximately one inch off the center of the car. KCS's petition did not provide the specific ''eccentricity'' of the end platforms as measured from the center between inner ends of handholds. KCS believes this defect creates no unsafe conditions.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2001–9746) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl-401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on January 2, 2002.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 02–311 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

**Massachusetts Bay Transportation Authority**

[Docket Number FRA–2000–8044]

Massachusetts Bay Transportation Authority (MBTA) seeks to resubmit a petition for reconsideration of a temporary waiver of compliance with the Railroad Safety Appliance Standards, 49 CFR 231.12(c)(4), which requires passenger car end handholds be securely fastened with bolts or rivets. MBTA states that the end handholds on their Bombardier and Kawasaki fleets of passenger coaches, as currently configured, are fastened with bolts to a slotted block that is welded to the end sill during the manufacturing process.

MBTA states that there are 146 Bombardier coaches in service since 1987–90 with no recorded failures, accidents, or injuries attributable to either the end handhold or the welded mounted blocks. There are 75 Kawasaki coaches that have been in service since 1990–91 and 17 in service since 1998 with no reported injuries attributable to the handhold or mounting blocks used to secure them.

MBTA reports having performed a recent inspection of both fleets, with no defects in the welds securing the

mounting blocks being detected. In addition, MBTA states that the weldment is inspected daily in accordance with the MBTA's Commuter Rail Maintenance Sheets, CRM–12, Daily Trip Inspection. In the event a defect is noted, the coach would immediately be removed from service with written notification to the local FRA Office. A remedial action plan would be developed with concurrence from FRA to ensure the repair meets or exceeds the standard of the original design. MBTA states that they are at 100% utilization of their coach fleet and removing these cars from service, for retrofit, would impose an undue financial burden without substantially improving safety. They submit that of the four possible retrofits they have considered the least expensive would cost approximately $125,000.00.

This request includes 146 Bombardier coaches numbered 350–389, 600–653, 1600–1652, excluding coach 1648 and 92, Kawasaki coaches numbered 700–749, 1700–1724 and 750–766. The coaches would remain in service until they receive their mid-life overhaul, when a modification would be engineered. For the 146 Bombardier coaches, this is tentatively scheduled for July 2002 and the Kawasaki coaches for July 2004. On November 24, 2000, a letter of denial was forwarded to MBTA (Docket FRA–2000–8044–3). At that time, FRA had determined insufficient information was presented, particularly, in regards to repairs. FRA has indicated to the petitioner that the agency is willing to consider an interim waiver to cover welded securement until an industry standard has been approved and adopted by the industry and FRA. FRA requested that MBTA's petition include information detailing a quality control process for repairing the weldment in the event of damage or failure.

On April 2, 2001, MBTA resubmitted a petition for interim waiver of compliance of Railroad Safety Appliances Standards, 49 CFR 231.12 (Docket FRA–2000–8044–4). The coaches for which the waiver is requested are currently in service and are used to provide commuter rail service throughout Massachusetts. MBTA is resubmitting this petition for interim waiver with the information by incorporating ATPA's proposed ''Repair Procedure for Welded Support Brackets,'' as the standard for repair of the end handholds, thus insuring American Welding Society (AWS) certified repair methods.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2000–8044) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on January 2, 2002.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 02–310 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

### The Minnesota Northern Railroad

[Waiver Petition Docket Number FRA–2001–10214]

The Minnesota Northern Railroad owns and operates a caboose, number MNN 019. This caboose is not used in regular service, but only on a limited basis in work train service, to transport railroad officials and private persons for typical railroad business purposes. The caboose will primarily be stored on a live rail siding. The car operates on the Minnesota Northern Railroad in a rural/suburban area which is 50% wooded and 50% cultivated farm land. The MNN requests relief from the requirements of Title 49 Code of Federal Regulations (CFR) § 223.13 Requirements for existing cabooses due to the infrequent use of the caboose, the planned usage for work and special train service, and the cost of installing compliant glazing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2001–10214) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room P1–401 (Plaza Level), 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on January 2, 2002.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 02–313 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety

standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**Ohio Central Railroad**

[Waiver Petition Docket Number FRA–2000–7351]

The Ohio Central Railroad owns and operates a caboose, number OHCR 556, which was built in 1976. This caboose is not used in regular service, but only on a limited basis in work train service. The car operates on the Ohio Central Railroad, which is a Class III railroad, operating a single track, unsignaled, line between South Zanesville and New Lexington, Ohio, a distance of 25 miles, with a branch to Glass Rock, Ohio, a distance of approximately 8 miles. The railroad operates in mainly a rural area, with South Zanesville being the largest population center. The petitioner reported that there were no records of vandalism or stoning of moving trains since they began operation in 1986. The OHCR requests relief from the requirements of Title 49 Code of Federal Regulations (CFR) 223.13 Requirements for existing cabooses due to the infrequent use of the caboose, the planned usage for work train service, and the cost of installing compliant glazing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2000–7351) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room P1–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on January 2, 2002.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 02–309 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**Union Pacific Railroad Company**

[Docket Number FRA–2001–11014]

The Union Pacific Railroad Company (UP) seeks a permanent waiver of compliance with the Locomotive Safety Standards, 49 CFR part 229.21(a), as it pertains to the record keeping requirement for locomotive daily inspection reports. If their request is granted, UP would file the required report electronically in a secure centralized database that would be set up to track and store the records for the required ninety-two days. The railroad states that each employee performing the inspections has been provided a unique electronic identification which will be utilized in place of the signature. All requirements, date, time location, person conducting inspection and any non-complying conditions will be reported electronically. UP utilizes an onboard record of daily inspections and will continue to do so if their request is granted.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2001–11014) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, D.C. 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on December 17, 2001.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator, for Safety Standards and Program Development.*

[FR Doc. 02–315 Filed 1–4–02; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waivers of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**WATCO Companies, Inc.**

[Docket Number FRA–2001–10593]

WATCO Companies, Inc., (WATCO) has petitioned the FRA for a waiver of compliance from certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive, WAMX 804, which is operated at National Starch & Chemical, 1515 Drover Street, Indianapolis, Indiana 46221.

Locomotive WAMX 804 is covered by 49 CFR part 223.1 which states: 223.1 Scope. ''This part provides minimum requirements for glazing materials in order to protect railroad employees and railroad passengers from injury as a result of objects striking the windows of locomotives, caboose and passenger cars.''

Locomotive WAMX 804 is operated by WATCO Companies, Inc., Switching

Services in an industrial/plant switching operation. The locomotive operates in two areas of speed restriction, one at 5 mph and one at 10 mph. WATCO Companies, Inc., advises that all broken or damaged glazing will be replaced by FRA approved glazing material.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number, (*e.g.,* Docket Number FRA–2001–10593) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590. Communications received within 45 days from the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practical. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on January 2, 2002.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 02–314 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on August 16, 2001 [66 FR 43037–43039].

**DATES:** Comments must be submitted on or before February 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** Barbara Williams at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS–01), 202–366–4327. 400 Seventh Street, SW, Room 5319, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**National Highway Traffic Safety Administration**

*Title:* 49 CFR 552, Petitions for Rulemaking, Defects, and Noncompliance Orders.

*OMB Number:* 2127—0046.

*Type of Request:* Extension of a currently approved collection.

*Abstract:* 49 U.S.C. section 30162 specifies that any ''interested person may file a petition with the Secretary of Transportation requesting the Secretary to begin a proceeding'' to prescribe a motor vehicle safety standard under 49 U.S.C. chapter 301, or to decide whether to issue an order under 49 U.S.C. section 30118(b). 49 U.S.C. 30111 gives the Secretary authority to prescribe motor vehicle safety standards. 49 U.S.C. section 30118(b) gives the Secretary authority to issue an order to a manufacturer to notify vehicle or equipment owners, purchasers, and dealers of the defect or noncompliance and to remedy the defect or noncompliance.

Section 30162 further specifies that all petitions filed under its authority shall set forth the facts, which it is claimed establish that an order is necessary and briefly describe the order the Secretary should issue.

*Affected Public:* Business or other-for-profit.

*Estimated Total Annual Burden:* 20.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

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

**Delmas Johnson,**

*Acting Associate Administrator for Administration.*

[FR Doc. 02–305 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on August 16, 2001 [66 FR 43037–43039].

**DATES:** Comments must be submitted on or before February 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** Jonathan White at the National Highway Traffic Safety Administration, Office of Defects & Recall Information Analysis (NSA–11), 202–366–5227. 400 Seventh Street, SW, Room 5319, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**National Highway Traffic Safety Administration**

*Title:* 49 CFR part 557, Petitions for Hearings on Notification and Remedy of Defects.

*OMB Number:* 2127–0039.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* NHTSA's statutory authority at 49 U.S.C. sections 30118(e) and 30120(e) specifies that ''on petition of any interested person,'' NHTSA may hold hearings to determine whether a manufacturer of motor vehicles or motor vehicle equipment has met its obligation to notify owners, purchasers, and dealers of vehicles or equipment of a defect or noncompliance and to remedy a defect or noncompliance for Federal Motor Vehicle Safety Standards for some of the products the manufacturer produces.

To address these areas, NHTSA has promulgated 49 CFR part 557, Petitions for Hearings on Notification and Remedy of Defects, which adopts a uniform regulation that establishes procedures to provide for submission and disposition of petitions, and to hold hearings on the issue of whether the manufacturer has met its obligation to notify owners, distributors, and dealers of safety related defects or noncompliance and to remedy the problems by repair, repurchase, or replacement.

*Affected Public:* Business or other-for-profit, individuals or households.

*Estimated Total Annual Burden:* 21.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

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

**Delmas Johnson,**

*Acting Associate Administrator for Administration.*

[FR Doc. 02–306 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on August 16, 2001 [66 FR 43037–43039].

**DATES:** Comments must be submitted on or before February 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** Jonathan White at the National Highway Traffic Safety Administration, Office of Defects & Recall Information Analysis (NSA–11), 202–366–5226. 400 Seventh Street, SW, Room 5319, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

### National Highway Traffic Safety Administration

*Title:* 49 CFR Part 576, Record Retention.

*OMB Number:* 2127–0042.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* Under 49 U.S.C. 30166(e), NHTSA ''reasonably may require a manufacturer of a motor vehicle or motor vehicle equipment to keep records, and a manufacturer, distributor, or dealer to make reports, to enable (NHTSA) to decide whether the manufacturer, distributor or dealer has complied or is complying with this chapter or a regulation prescribed under this chapter.''

49 U.S.C. 30118(c) requires manufacturers to notify NHTSA and owners, purchasers, and dealers if the manufacturer (1) ''learns'' that any vehicle or equipment manufactured by it contains a defect and decides in good faith that the defect relates to motor vehicle safety, or (2) ''decides in good faith'' that the vehicle or equipment does not comply with an applicable Federal motor vehicle safety standard. The only way for the agency to decide if and when a manufacturer ''learned'' of a safety-related defect or ''decided in good faith'' that some products did not comply with an applicable Federal motor vehicle safety standard is for the agency to have access to the information available to the manufacturer.

*Affected Public:* Business or other-for-profit, individuals or households.

*Estimated Total Annual Burden:* 40,000.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

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

**Delmas Johnson,**

*Acting Associate Administrator for Administration.*

[FR Doc. 02–307 Filed 1–4–02; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–290 (Sub–No. 219X)]**

### 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 2.23-mile line of railroad between milepost HS–0.0 at Oakwood and milepost HS–2.23 at Mills, in Buchanan County, VA. The line traverses United States Postal Service Zip Code 24631.

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 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 February 6, 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 17, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 28, 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 11, 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 January 7, 2003, 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 Web site at *www.stb.dot.gov.*

Decided: December 27, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 02–103 Filed 1–4–02; 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 the filing fee, which currently is set at $1,000. *See* 49 CFR 1002.2(f)(25).

## DEPARTMENT OF THE TREASURY

### Customs Service

### Extension of General Program Test Regarding Post Entry Amendment Processing

**AGENCY:** Customs Service, Treasury.

**ACTION:** General notice.

**SUMMARY:** This document announces that the general program test regarding post entry amendment processing is being extended for a period of one year. The test will continue to operate in accordance with the notice published in the **Federal Register** on November 28, 2000.

**DATES:** The test allowing post entry amendment to entry summaries is extended to December 31, 2002.

**FOR FURTHER INFORMATION CONTACT:** Bruce Ingalls, Chief, Entry and Drawback Management Branch, Office of Field Operations (202/927–1082).

**SUPPLEMENTARY INFORMATION:** Customs announced and explained the post entry amendment processing test in a general notice document published in the **Federal Register** (65 FR 70872) on November 28, 2000. That notice announced that the test would commence no earlier than December 28, 2000, and run for approximately one year. In fact, the test is scheduled to operate through December 31, 2001.

Briefly, the test allows importers to amend entry summaries (not informal entries) prior to liquidation by filing with Customs either an individual amendment letter upon discovery of an error or a quarterly tracking report covering any errors that occurred during the quarter. The previously published general notice explained how to file post entry amendments for revenue related errors and non-revenue related errors, and the consequences of misconduct by importers during the test. It also provided that there are no application procedures or eligibility requirements. This document announces that the test is being extended to December 31, 2002. To participate in the test, an importer need only follow the procedure set forth in the previously published general notice.

Comments received in response to the previously published general notice have been reviewed and the test is being evaluated. Changes to the test based on the comments and the evaluation will be announced in the **Federal Register** in due course. The test may be further extended if warranted. Additional information on the post entry amendment procedure can be found under ''Importing and Exporting'' at *http://www.customs.gov.*

Dated: December 31, 2001.

**Bonni G. Tischler,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. 02–288 Filed 1–4–02; 8:45 am]

**BILLING CODE 4820–02–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Proposed Collection; Comment Request for Cuban Remittance Affidavit

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of

Foreign Assets Control (''OFAC'') within the Department of the Treasury is soliciting comments concerning OFAC's Cuban Remittance Affidavit information collection.

**DATES:** Written comments should be received on or before March 8, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to David W. Mills, Chief, Policy Planning & Program Management Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information about the filings or procedures should be directed to David W. Mills, Chief, Policy Planning & Program Management Division, Office of Foreign Assets Control, or Barbara C. Hammerle, Chief Counsel (Foreign Assets Control), Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:**

*Title:* Cuban Remittance Affidavit.

*OMB Number:* 1505–0167.

*Abstract:* The information is required of persons subject to the jurisdiction of the United States who make remittance to persons in Cuba pursuant to § 515.570 of the Cuban Assets Controls, 31 CFR part 515. The information will be used by the Office of Foreign Assets Control of the Department of the Treasury (''OFAC'') to monitor compliance with regulations governing family and emigration remittance.

*Current Actions:* There are no changes being made to the notice at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 1,000,000 filers per quarter, each filing four times a year.

*Estimated Time Per Respondents:* 60 seconds per form, with four filed annually per person.

*Estimated Total Annual Burden Hours:* 66,667, assuming each filer files four times a year.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget (''OMB'') control number. Books or records relating to a collection of information must be retained for five years.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

Approved: December 28, 2001.

**David W. Mills,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. 02–290 Filed 1–4–02; 8:45 am]

**BILLING CODE 4810–25–M**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Proposed Collection; Comment Request for Travel Service Provider and Carrier Service Provider Submission

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice and request for comments

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Foreign Assets Control (''OFAC'') within the Department of the Treasury is soliciting comments concerning OFAC's Travel Service Provider and Carrier Service Provider information collection.

**DATES:** Written comments should be received on or before March 8, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to David W. Mills, Chief, Policy Planning and Program Management Division, Office of Foreign Assets Control, department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information about the filings or procedures should be directed to David W. Mills, Chief, Policy Planning & Program Management Division, Office of Foreign Assets Control, or Barbara C. Hammerle, Chief Counsel (Foreign Assets Control), Department of the Treasury, 1500 Pennsylvania Avenue, NW., 1500 Pennsylvania Avenue, Annex—2d Floor, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:**

*Title:* Travel Service Provider and Carrier Service Provider Submission.

*OMB Number:* 1505–0168.

*Abstract:* The information is required of persons who have been authorized by the Office of Foreign Assets Control of the Department of the Treasury (''OFAC'') to handle travel arrangements to, from, and or within Cuba or to provide charter air service to Cuba. Travel service providers are required to collect information on persons traveling on direct flights to Cuba and forward that information to carrier service providers, for ultimate submission to OFAC.

*Current Actions:* There are no changes being made to the notice at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households and businesses.

*Estimated Number of Respondents:* 228,000.

*Estimated Time Per Respondent:* 5 minutes per entry for travel service providers, or up to 570,000 minutes annually for travel service providers in the aggregate (9,500 hours); and up to 5 minutes per entry for carrier service providers, or up to 570,000 entries annually for carrier service providers in the aggregate (9,500 hours).

*Estimated Total Annual Burden Hours:* 19,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget (''OMB'') control number. Books or records relating to a collection of information must be retained for five years.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 28, 2001.

**David W. Mills,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. 02–291 Filed 1–4–02; 8:45 am]

**BILLING CODE 4810–25–M**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Proposed Collection; Comment Request for Registration of Libyan Travel

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of is continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Foreign Assets Control (''OFAC'') within the Department of the Treasury is soliciting comments concerning OFAC's Libyan travel information collection. *See,* 31 CFR 550.560.

**DATES:** Written comments should be received on or before March 8, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to David W. Mills, Chief, Policy Planning & Program Management Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Annex—2d Floor, Washington, D.C. 20220.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information about the filing or procedures should be directed to David W. Mills, Chief, Policy Planning & Program Management Division, Office of Foreign Assets Control, or Barbara C. Hammerle, Chief Counsel (Foreign Assets Control), Department of the Treasury, 1500 Pennsylvania Avenue, N.W., 1500 Pennsylvania Avenue, Annex—2d Floor, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:**

*Title:* Travel to Libya by Immediate Family members of Libyan Nationals.

*OMB Number:* 1505–0092.

*Abstract:* The information must be filed by United States persons with the Licensing Division of the Office of Foreign Assets Control of the department of the Treasury ('OFAC'') or with the Belgian Embassy in Tripoli, Libya, with respect to their eligibility to travel to and reside in Libya pursuant to the provision of § 550.560 of the Libyan Sanctions Regulations, 31 CFR part 550.

*Current Actions:* There are no changes being made to the notice at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 5.

*Estimated Time Per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 5.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget (''OMB'') control number. Books or records relating to a collection of information must be retained for five years. However, respondent's are not required to maintain any documents but the data is of a type ordinarily retained (birth certificate, naturalization certificate, U.S. passport number).

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

Approved: December 28, 2001.

**David W. Mills,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. 02–292 Filed 1–4–02; 8:45 am]

**BILLING CODE 4810–25–M**

Federal Register

Monday,
January 7, 2002

# Part II

# Department of Labor

**Pension and Welfare Benefits Administration**

**29 CFR Parts 2520, 2560, and 2570**

**Removal of Superseded Regulations Relating to Plan Descriptions and Summary Plan Descriptions, and Other Technical Conforming Amendments; Final Rule**

**Furnishing Documents To The Secretary of Labor on Request Under ERISA Section 104(a)(6) And Assessment Of Civil Penalties Under ERISA Section 502(c)(6); Final Rule**

**DEPARTMENT OF LABOR**

**Pension and Welfare Benefits Administration**

**29 CFR Parts 2520 and 2560**

**RIN 1210–AA66**

## Removal of Superseded Regulations Relating to Plan Descriptions and Summary Plan Descriptions, and Other Technical Conforming Amendments

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** This document contains a final rulemaking that removes certain provisions from the Code of Federal Regulations (CFR) that were superseded, in whole or in part, by amendments of the Employee Retirement Income Security Act of 1974 (ERISA) enacted as part of section 1503 of the Taxpayer Relief Act of 1997 (TRA ''97). These TRA ''97 amendments eliminated the ERISA requirements that plan administrators file summary plan descriptions (SPDs) and summaries of material modifications (SMMs) with the Department of Labor (Department). The amendments also eliminated all requirements pertaining to plan descriptions. In addition to removing superseded regulations from the CFR, this final rule makes miscellaneous technical amendments to the CFR designed to correct affected cross-references. The final rule affects employee pension and welfare benefit plans, plan sponsors, administrators and fiduciaries, and plan participants and beneficiaries.

**DATES:** The amendments contained herein will be effective March 8, 2002. The amendments contained herein will be applicable as of the August 5, 1997 effective date of section 1503 of TRA '97.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Fields, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 693–8500 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### 1. Overview

On August 5, 1999, the Department published in the **Federal Register** (64 FR 42792) a proposed rule to implement certain amendments to ERISA added as part of TRA '97. TRA '97 amended sections 101(b), 102, and 104(a)(1) of ERISA to eliminate the requirements that plan administrators file SPDs, SMMs, and plan descriptions with the Department.[1] TRA '97 also amended section 104(b) of ERISA to eliminate the requirement that plan administrators furnish plan descriptions to participants and beneficiaries. These statutory amendments superseded, in whole or in part, the Department's regulations that implemented the SPD, SMM, and plan description filing requirements. This final rule removes those superseded regulations from the CFR.[2] This final rule also makes several technical conforming amendments to reflect the fact that certain regulatory provisions granting relief from certain plan description, SPD, and SMM requirements have also been superseded and rendered obsolete by the TRA '97 amendments. Finally, the final rule corrects affected regulatory and statutory cross-references in parts 2520 and 2560 of Chapter XXV of Title 29 of the CFR. A chart identifying each regulation that is changed by this final rule is printed below.

### 2. Public Comments and Adoption of Final Rule

The Department received no comments concerning the proposal, and the final rule being adopted herein is substantially in the form proposed. A technical conforming change to 29 CFR 2520.104b–2(g) that was inadvertently omitted from the proposal has been added to the final rule.

### 3. Summary of Final Rule

This final rule removes, some in whole and some in part, the following superseded regulations from 29 CFR part 2520. This final rule also reserves certain removed sections of the CFR to preserve the continuity of codification in the CFR.

*A. Removal of Regulations Superseded in Whole*

This final rule removes and reserves sections 2520.102–1 and 2520.104a–2 because they were superseded by paragraphs (a) and (c) of section 1503 of TRA '97 which eliminated sections 101(b)(2) and 104(a)(1)(B) of ERISA. The removed regulations required plan administrators to file a plan description with the Department in accordance with sections 101(b)(2) and 104(a)(1)(B) of ERISA. *See supra* note 1.

This final rule removes and reserves section 2520.104a–3 because it was superseded by paragraphs (a) and (c) of section 1503 of TRA '97 which eliminated sections 101(b)(1) and 104(a)(1)(C) of ERISA. The removed regulation implemented the requirement in sections 101(b)(1) and 104(a)(1)(C) of ERISA that plan administrators file with the Department a copy of any SPD that is required to be furnished to participants covered under the plan and beneficiaries receiving benefits under the plan.

This final rule removes and reserves sections 2520.104a–4 and 2520.104a–7 because they were superseded by paragraphs (a) and (c) of section 1503 of TRA '97 which eliminated sections 101(b)(3), 102(a)(2), and 104(a)(1)(D) of ERISA. The removed regulations implemented sections 101(b)(3), 102(a)(2), and 104(a)(1)(D) of ERISA which required plan administrators to file with the Department a copy of summaries of material modifications in the terms of the plan and summaries of any changes in the information required to be in the SPD.

*B. Removal of Regulations Superseded in Part*

This final rule amends section 2520.104–20 to reflect the fact that certain reporting relief granted by that regulation is no longer needed in light of TRA '97. Specifically, section 2520.104–20 exempts certain unfunded or insured welfare plans with fewer than 100 participants from, among others, the requirements to file plan descriptions, SPDs, and SMMs with the Department. Inasmuch as plan descriptions, SPDs, and SMMs are no longer required to be filed under ERISA as amended by TRA '97, this final rule amends section 2520.104–20(a) to remove the provisions that granted relief from those filing requirements.

This final rule similarly amends section 2520.104–21 to reflect the fact

[1] Prior to 1979, the administrator of an employee benefit plan subject to the provisions of Part 1 of Title I of ERISA was required to file with the Department a plan description (Form EBS–1) to satisfy the statutory filing requirements of section 104(a) and 29 CFR 2520.104a–2. *See* 41 FR 16957 (April 23, 1976). In 1979, the Department amended 29 CFR 2520.104a–2 (44 FR 31639 (June 1, 1979)), to provide that the administrator would satisfy the plan description filing requirements of section 104(a)(1)(B) by filing with the Department SPDs and updated SPDs in accordance with section 104(a)(1)(C) and the regulations thereunder.

[2] The Department is also publishing in today's **Federal Register** a separate final rule to implement related TRA '97 amendments that added sections 502(c)(6) and 104(a)(6) to Title I of ERISA. Section 104(a)(6) provides that the administrator of any employee benefit plan must furnish to the Department, upon request, any documents relating to the employee benefit plan, including but not limited to, the latest SPD, and the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated. Section 502(c)(6) provides that if, within 30 days of a request by the Department to a plan administrator for documents under section 104(a)(6), the plan administrator fails to furnish the material requested to the Department, the Department may assess a civil penalty against the plan administrator of up to $100 a day from the date of such failure, but in no event in excess of $1,000 per request.

that the SPD, SMM, and plan description filing relief granted by that regulation is no longer needed in light of the TRA '97 elimination of those filing requirements. Specifically, section 2520.104–21 provides a limited exemption from, among others, the requirements to file SPDs, SMMs, and plan descriptions with the Department for welfare benefit plans that cover fewer than 100 participants at the beginning of the plan year, are part of a group insurance arrangement within the meaning of the regulation, and that otherwise satisfy the conditions of section 2520.104–21(b). This final rule amends section 2520.104–21(a) by removing the provisions on filing SPDs, SMMs, and plan descriptions because these documents are no longer required to be filed under ERISA as amended by TRA '97.[3]

This final rule amends sections 2520.104–20(c) and 2520.104–21(c) to confirm that, under the exemption, plan administrators continue to be obligated to furnish certain information to the Secretary on request by changing the reference in these subsections from section 104(a)(1) to section 104(a)(6). The amendments made by this final rule do not otherwise change the relief available in sections 2520.104–20 and 2520.104–21.

This final rule further amends sections 2520.104–20 and 2520.104–21 to reflect the fact that the relief granted by those regulations from the requirement to disclose plan descriptions is no longer needed in light of the TRA '97 elimination of all plan description requirements from Title I of ERISA. These regulations exempted eligible welfare plans from the requirements to (1) furnish upon written request of any participant or beneficiary a copy of the plan description and (2) make copies of the plan description available in the principal office of the administrator and such other places as may be necessary for examination by any participant or beneficiary. This final rule amends sections 2520.104–20(a)(2) and (a)(3) and 2520.104–21(a)(1) and (a)(2) by removing the provisions on disclosing plan descriptions because plan descriptions are no longer required to be furnished or made available under ERISA as amended by TRA '97.

This final rule amends sections 2520.104–26 and 2520.104–27 to reflect the fact that the relief granted by those regulations from the requirements to file plan descriptions, SPDs, and SMMs is no longer needed in light of the TRA '97 elimination of those filing requirements. These regulations provided certain unfunded dues financed welfare and pension plans maintained by employee organizations with a limited exemption from, among others, the requirement to file plan descriptions and a simplified option for complying with the filing and disclosure requirements applicable to SPDs. This final rule amends sections 2520.104–26 and 2520.104–27 by removing the provisions on plan descriptions and further amends sections 2520.104–26 and 2520.104–27 to remove the simplified option for complying with the SPD filing requirements because plan descriptions and SPDs are no longer required to be filed with the Department under ERISA as amended by TRA '97. The amendments made by this final rule do not otherwise change the relief available in section 2520.104–26 and 2520.104–27.

### *C. Technical Conforming Amendments*

This final rule also makes technical changes that are needed to conform certain cross-references in 29 CFR parts 2520 and 2560 to sections of ERISA as amended by TRA '97. For example, regulation section 2520.104–43(a) refers to ERISA section 104(a)(1)(A) as the authority for the requirement to file annual reports with the Department. After TRA '97, the correct citation is to section 104(a)(1) of ERISA. Similar technical changes have also been made to conform internal CFR cross-references.[4]

### *D. Quick Reference Chart*

The chart below is intended to provide interested persons with a quick reference tool for identifying each section of 29 CFR parts 2520 and 2560 that is being amended by this final rule. For each regulation section being amended, the chart lists, in separate columns, what is being removed, what is being added, and a brief statement of the reason for the change.

QUICK REFERENCE CHART

| CFR section(s) | Remove | Add | Reason(s) |
|---|---|---|---|
| 2520.102–1 | The whole section | ''Reserved'' | All ''plan description'' requirements eliminated from ERISA. |
| 2520.102–4 | The last sentence | Nothing | SPD filing requirement eliminated. |
| 2520.104–4(a) | Last sentence | Nothing | SPD filing requirement eliminated. |
| 2520.104–20(a) (introductory text) | ''any of the followind documents: Plan description, copy of summary plan description, description of material modification in the terms of a plan or change in the information required to be included in the plan description,''. | Nothing | All ''plan description'' requirements eliminated from ERISA, SPD filing requirement eliminated, and SMM filing requirement eliminated. |
| 2520.104–20(a)(2) | ''plan description,'' | Nothing | All ''plan description'' requirements eliminated from ERISA. |
| 2520.104–20(a)(3) | ''plan description and'' | Nothing | All ''plan description'' requirements eliminated from ERISA. |
| 2520.104–20(c) | ''(section 104(a)(1))'' | ''(section 104(a)(6))'' | Requirement to furnish documents to the Department upon request moved to section 104(a)(6). |

[3] Section 2520.104–21(d)(3) was previously amended to eliminate references to requirements to file plan descriptions, SPDs, and SMMs as part of a final rule adopting amendments to ERISA's annual reporting regulations. *See* 65 FR 21068, 21084 (April 19, 2000).

[4] The proposal included conforming amendments to sections 2520.103–1(a), 2520.103–5(a), 2520.103–5(c)(1)(i), 2520.103–5(c)(1)(iii), 2520.103–5(c)(2)(ii), 2520.103–5(c)(2)(iii), 2520.103–5(c)(3), 2520.103–12(a), and 2520.104–41(b) to reflect a cross-reference correction by replacing ''section 104(a)(1)(A)'' with ''section 104(a)(1).'' These changes were adopted as final as part of an April 12, 2000 final rulemaking relating to the annual reporting and disclosure requirements under part 1 of Title I of ERISA. *See* 65 FR 21068 (April 19, 2000). Accordingly, these changes are not included in this rule.

QUICK REFERENCE CHART—Continued

| CFR section(s) | Remove | Add | Reason(s) |
|---|---|---|---|
| 2520.104–21(a) (introductory text) | ''with the Secretary any of the following documents: Plan description, copy of summary plan description, description of material modification in the terms of a plan or change in the information required to be included in the plan description, and terminal report. In addition, the administrator of a plan exempted under this section:''. | After the word file, add: ''with the Secretary a terminal report or furnish upon written request of any participant or beneficiary a copy of any terminal report as required by section 104(b)(4) of the Act.''. | All ''plan description'' requirements eliminated from ERISA, SPD filing requirement eliminated, and SMM filing requirement eliminated. |
| 2520.104–21(a)(1) | All of (a)(1) | Nothing | All ''plan description'' requirements eliminated from ERISA. |
| 2520.104–21(a)(2) | All of (a)(2) | Nothing | All ''plan description'' requirements eliminated from ERISA. |
| 2520.104–21(c) (2nd parenthetical) | ''section 104(a)(1)(A)'' | ''section 104(a)(1)'' | Cross-reference correction. |
| 2520.104–21(c) (3rd parenthetical) | ''section 104(a)(1)'' | ''section 104(a)(6)'' | Requirement to furnish documents to the Department upon request moved to section 104(a)(6). |
| 2520.104–23(b)(2) | ''104(a)(1)'' | ''104(a)(6)'' | Requirement to furnish documents to the Department upon request moved to section 104(a)(6). |
| 2520.104–24(b) | ''104(a)(1)'' | ''104(a)(6)'' | Requirement to furnish documents to the Department upon request moved to section 104(a)(6). |
| 2520.104–25 | ''104(a)(1)'' | ''104(a)(6)'' | Requirement to furnish documents to the Department upon request moved to section 104(a)(6). |
| 2520.104–26(a) | All of paragraph (a), (a)(1), (a)(2), and (a)(3). | New paragraph (a), (a)(1), and (a)(2). | Paragraph (a) restructured to reflect the fact that ''plan description'' requirements and the SPD filing requirement were eliminated from ERISA. |
| 2520.104–27(a) | All of paragraph (a), (a)(1), (a)(2), and (a)(3). | New paragraph (a), (a)(1), and (a)(2). | Paragraph (a) restructured to reflect the fact that ''plan description'' requirements and the SPD filing requirement were eliminated from ERISA. |
| 2520.104–43(a) | ''section 104(a)(1)(A)'' | ''section 104(a)(1)'' | Cross-reference correction. |
| 2520.104–44(d) | ''section 104(a)(1)(A)'' | ''section 104(a)(1)'' | Cross-reference correction. |
| 2520.104a–2 | Whole section | ''Reserved'' | All ''plan description'' requirements eliminated from ERISA. |
| 2520.104a–3 | Whole section | ''Reserved'' | SPD filingrequirement eliminated. |
| 2520.104a–4 | Whole section | ''Reserved'' | SMM filing requirement eliminated. |
| 2520.104a–5(a) | ''section 104(a)(1)(A)'' | ''section 104(a)(1)'' | Cross-reference correction. |
| 2520.104a–5(a)(1) | All text in paragraph (a)(1) | ''Reserved'' | Provision obsolete. |
| 2520.104a–7 | Whole section | ''Reserved'' | SMM filing requirement eliminated. |
| 2520.104b–1(b)(3) | ''plan description'' | Nothing | All ''plan description'' requirements eliminated from ERISA. |
| 2520.104b–2(g) | ''to file with the Secretary or'' | Nothing | SPD filing requirement eliminated. |
| 2520.104b–3(f) | All of paragraph (f) | Nothing | Part of paragraph (f) superseded by TRA '97 and the rest of the paragraph made obsolete by this rule's removal of § 2520.104a–3. |
| 2520.104b–3(g) | All of paragraph (9g) | Nothing | Paragraph (g) superseded by TRA '97 by this rule's removal of § 2520.104a–3. |
| 2560.502c–2(a) | ''section 101(b)(4)'' | ''section 101(b)(1)'' | Cross-reference correction. |

**Executive Order 12866 Statement**

Under Executive Order 12866, the Department must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory

action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is not significant within the meaning of the Executive Order.

**Paperwork Reduction Act**

The rule being issued here is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain an ''information collection request'' as defined in 44 U.S.C. 3502(3).

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each Federal agency to prepare a final regulatory flexibility analysis when promulgating a final rule unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions. Because this rule would remove certain provisions of the CFR and make a number of technical amendments to the CFR designed to correct cross-references affected by amendments to ERISA enacted as part of TRA '97, the rule has no impact, independent of the statutory change eliminating the SPD and SMM filing requirements, on small plans. As a result, the undersigned certifies that this final rule does not have a significant impact on a substantial number of small entities. The factual basis for this certification is the same regardless of whether one uses the definition of small entity found in regulations issued by the Small Business Administration (13 CFR 121.201) or one defines small entity, on the basis of section 104(a)(2) of ERISA, as an employee benefit plan with fewer than 100 participants.

**Small Business Regulatory Enforcement Fairness Act**

The rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review. The rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Unfunded Mandates Reform Act**

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and will not impose an annual burden of $100 million or more on the private sector.

**Federalism Statement**

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. Further, this final rule implements certain revisions to annual reporting and disclosure regulations which have been in effect in similar form for many years. The elimination of superseded regulations from the CFR and correction of cross-references ensure consistency between regulations and statutory requirements, and do not alter the fundamental requirements of the statute with respect to the reporting and disclosure requirements for employee benefit plans, and as such has no implications for the States or the relationship or distribution of power between the national government and the States.

**Statutory Authority**

This final rule is promulgated pursuant to the authority contained in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894, 29 U.S.C. 1135) and sections 101(b) and 104(a)(1) of ERISA, as amended, and under the Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

**List of Subjects**

*29 CFR Part 2520*

Employee benefit plans, Group health plans, Pension plans, Welfare benefit plans.

*29 CFR Part 2560*

Claims, Employee benefit plans, Law enforcement, Pensions.

For the reasons set forth above, parts 2520 and 2560 of Chapter XXV of Title 29 of the Code of Federal Regulations are amended as follows:

## PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1.The authority citation for part 2520 continues to read as follows:

**Authority:** Secs. 101, 102, 103, 104, 105, 109, 110, 111 (b)(2), 111(c), and 505, Pub. L. 93–406, 88 Stat. 840–52 and 894 (29 U.S.C. 1021–1025, 1029–31, and 1135); Secretary of Labor's Order No. 27–74, 13–76, 1–87, and Labor Management Services Administration Order 2–6.

Sections 2520.102–3, 2520.104b–1 and 2520.104b–3 also are issued under sec. 101(a), (c) and (g)(4) of Pub. L. 104–191, 110 Stat. 1936, 1939, 1951 and 1955 and, sec. 603 of Pub. L. 104–204, 110 Stat. 2935 (29 U.S.C. 1185 and 1191c).

### § 2520.102–1 [Removed]

2. Section 2520.102–1 is removed and reserved.

3. Revise § 2520.102–4 to read as follows:

### § 2520.102–4 Option for different summary plan descriptions.

In some cases an employee benefit plan may provide different benefits for various classes of participants and beneficiaries. For example, a plan amendment altering benefits may apply to only those participants who are employees of an employer when the

amendment is adopted and to employees who later become participants, but not to participants who no longer are employees when the amendment is adopted. (See § 2520.104b–4). Similarly, a plan may provide for different benefits for participants employed at different plants of the employer, or for different classes of participants in the same plant. In such cases the plan administrator may fulfill the requirement to furnish a summary plan description to participants covered under the plan and beneficiaries receiving benefits under the plan by furnishing to each member of each class of participants and beneficiaries a copy of a summary plan description appropriate to that class. Each summary plan description so prepared shall follow the style and format prescribed in § 2520.102–2, and shall contain all information which is required to be contained in the summary plan description under § 2520.102–3. It may omit information which is not applicable to the class of participants or beneficiaries to which it is furnished. It should also clearly identify on the first page of the text the class of participants and beneficiaries for which it has been prepared and the plan's coverage of other classes. If the classes which the employee benefit plan covers are too numerous to be listed adequately on the first page of the text of the summary plan description, they may be listed elsewhere in the text so long as the first page of the text contains a reference to the page or pages in the text which contain this information.

4. Revise paragraph (a) of § 2520.104–4 to read as follows:

**§ 2520.104–4 Alternative method of compliance for certain successor pension plans.**

(a) *General.* Under the authority of section 110 of the Act, this section sets forth an alternative method of compliance for certain successor pension plans in which some participants and beneficiaries not only have their rights set out in the plan, but also retain eligibility for certain benefits under the terms of a former plan which has been merged into the successor. This section is applicable only to plan mergers which occur after the issuance by the successor plan of the initial summary plan description under the Act. Under the alternative method, the plan administrator of the successor plan is not required to describe relevant provisions of merged plans in summary plan descriptions of the successor plan furnished after the merger to that class of participants and beneficiaries still affected by the terms of the merged plans.

* * * * *

5. Revise the introductory text in paragraph (a) and paragraphs (a)(2), (a)(3), and (c) of § 2520.104–20 to read as follows:

**§ 2520.104–20 Limited exemption for certain small welfare plans.**

(a) *Scope.* Under the authority of section 104(a)(3) of the Act, the administrator of any employee welfare benefit plan which covers fewer than 100 participants at the beginning of the plan year and which meets the requirements of paragraph (b) of this section is exempted from certain reporting and disclosure provisions of the Act. Specifically, the administrator of such plan is not required to file with the Secretary an annual or terminal report. In addition, the administrator of a plan exempted under this section—

* * * * *

(2) Is not required to furnish upon written request of any participant or beneficiary a copy of the annual report and any terminal report, as required by section 104(b)(4) of the Act;

(3) Is not required to make copies of the annual report available for examination by any participant or beneficiary in the principal office of the administrator and such other places as may be necessary, as required by section 104(b)(2) of the Act.

* * * * *

(c) *Limitations.* This exemption does not exempt the administrator of an employee benefit plan from any other requirement of title I of the Act, including the provisions which require that plan administrators furnish copies of the summary plan description to participants and beneficiaries (section 104(b)(1)) and furnish certain documents to the Secretary of Labor upon request (section 104(a)(6)), and which authorize the Secretary of Labor to collect information and data from employee benefit plans for research and analysis (section 513).

* * * * *

6. Amend § 2520.104–21 by revising paragraphs (a) and (c) to read as follows:

**§ 2520.104–21 Limited exemption for certain group insurance arrangements.**

(a) *Scope.* Under the authority of section 104(a)(3) of the Act, the administrator of any employee welfare benefit plan which covers fewer than 100 participants at the beginning of the plan year and which meets the requirements of paragraph (b) of this section is exempted from certain reporting and disclosure provisions of the Act. Specifically, the administrator of such plan is not required to file with the Secretary a terminal report or furnish upon written request of any participant or beneficiary a copy of any terminal report as required by section 104(b)(4) of the Act.

* * * * *

(c) *Limitations.* This exemption does not exempt the administrator of an employee benefit plan from any other requirement of title I of the Act, including the provisions which require that plan administrators furnish copies of the summary plan description to participants and beneficiaries (section 104(b)(1)), file an annual report with the Secretary of Labor (section 104(a)(1)) and furnish certain documents to the Secretary of Labor upon request (section 104(a)(6)), and authorize the Secretary of Labor to collect information and data from employee benefit plans for research and analysis (section 513).

* * * * *

**§ 2520.104–23 [Amended]**

7. Section 2520.104–23 is amended by removing from paragraph (b)(2) the term ''104(a)(1)'' and adding, in its place, the term ''104(a)(6)''.

**§ 2520.104–24 [Amended]**

8. Section 2520.104–24 is amended by removing from paragraph (b) the term ''104(a)(1)'' and adding, in its place, the term ''104(a)(6)''.

**§ 2520.104–25 [Amended]**

9. Section 2520.104–25 is amended by removing the term ''104(a)(1)'' and adding, in its place, the term ''104(a)(6)''.

10. In § 2520.104–26, revise paragraph (a) to read as follows:

**§ 2520.104–26 Limited exemption for certain unfunded dues financed welfare plans maintained by employee organizations.**

(a) *Scope.* Under the authority of section 104(a)(3) of the Act, a welfare benefit plan that meets the requirements of paragraph (b) of this section is exempted from the provisions of the Act that require filing with the Secretary an annual report and furnishing a summary annual report to participants and beneficiaries. Such plans may use a simplified method of reporting and disclosure to comply with the requirement to furnish a summary plan description to participants and beneficiaries, as follows:

(1) In lieu of filing an annual report with the Secretary or distributing a summary annual report, a filing is made of Report Form LM–2 or LM–3, pursuant to the Labor-Management

Reporting and Disclosure Act (LMRDA) and regulations thereunder, and

(2) In lieu of a summary plan description, the employee organization constitution or by-laws may be furnished in accordance with § 2520.104b–2 to participants and beneficiaries together with any supplement to such document necessary to meet the requirements of §§ 2520.102–2 and 2520.102–3.

* * * * *

11. In § 2520.104–27, revise paragraph (a) to read as follows:

**§ 2520.104–27 Alternative method of compliance for certain unfunded dues financed pension plans maintained by employee organizations.**

(a) *Scope.* Under the authority of section 110 of the Act, a pension benefit plan that meets the requirements of paragraph (b) of this section is exempted from the provisions of the Act that require filing with the Secretary an annual report and furnishing a summary annual report to participants and beneficiaries receiving benefits. Such plans may use a simplified method of reporting and disclosure to comply with the requirement to furnish a summary plan description to participants and beneficiaries receiving benefits, as follows:

(1) In lieu of filing an annual report with the Secretary or distributing a summary annual report, a filing is made of Report Form LM–2 or LM–3, pursuant to the Labor-Management Reporting and Disclosure Act (LMRDA) and regulations thereunder, and

(2) In lieu of a summary plan description, the employee organization constitution or bylaws may be furnished in accordance with § 2520.104b–2 to participants and beneficiaries together with any supplement to such document necessary to meet the requirements of §§ 2520.102–2 and 2520.102–3.

* * * * *

**§ 2520.104–43 [Amended]**

12. Section 2520.104–43 is amended by removing from paragraph (a) the term ''section 104(a)(1)(A)'' and adding, in its place, ''section 104(a)(1)''.

**§ 2520.104–44 [Amended]**

13. Section 2520.104–44 is amended by removing from paragraph (d) the term ''section 104(a)(1)(A)'' and adding, in its place, ''section 104(a)(1)''.

**§ 2520.104a–2 [Removed]**

14. Section 2520.104a–2 is removed and reserved.

**§ 2520.104a–3 [Removed]**

15. Section 2520.104a–3 is removed and reserved.

**§ 2520.104a–4 [Removed]**

16. Section 2520.104a–4 is removed and reserved.

**§ 2520.104a–5 [Amended]**

17–18. Section 2520.104a–5 is amended by removing from paragraph (a) the term ''section 104(a)(1)(A)'' and adding, in its place, the term ''section 104(a)(1)''; and by removing and reserving paragraph (a)(1).

**§ 2520.104a–7 [Removed]**

19. Section 2520.104a–7 is removed and reserved.

**§ 2520.104b–1 [Amended]**

20. Section 2520.104b–1 is amended by removing from the third sentence of paragraph (b)(3) the term ''plan description''.

21. In § 2520.104b–2, revise paragraph (g)(1) to read as follows:

**§ 2520.104b–2 Summary plan description.**

* * * * *

(g) *Terminated plans.* (1) If, on or before the date by which a plan is required to furnish a summary plan description or updated summary plan description to participants and pension plan beneficiaries under this section, the plan has terminated within the meaning of paragraph (g)(2) of this section, the administrator of such plan is not required to furnish to participants covered under the plan or to beneficiaries receiving benefits under the plan a summary plan description.

* * * * *

**§ 2520.104b–3 [Amended]**

22. Section 2520.104b–3 paragraphs (f) and (g) are removed and reserved.

## PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

23. The authority citation for part 2560 continues to read as follows:

**Authority:** Secs. 502, 505 of ERISA, 29 U.S.C. 1132, 1135, and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

Section 2560.502–1 also issued under sec. 502(b)(2), 29 U.S.C. 1132(b)(2).

Section 2560.502i–1 also issued under sec. 502(i), 29 U.S.C. 1132(i).

Section 2560.503–1 also issued under sec. 503, 29 U.S.C. 1133.

**§ 2560.502c–2 [Amended]**

24. Section 2560.502c–2 is amended by removing from paragraph (a)(1) and (a)(2) the term ''section 101(b)(4)'' each time it appears and adding, in its place, the term ''section 101(b)(1)''.

Signed at Washington, DC, this 22nd day of December, 2001.

**Ann L. Combs,**

*Assistant Secretary, Pension and Welfare, Benefits Administration, U.S. Department of Labor.*

[FR Doc. 02–140 Filed 1–4–02; 8:45 am]

BILLING CODE 4510–29–P

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### 29 CFR Parts 2520, 2560 and 2570

**RIN 1210–AA67, RIN 1210–AA68**

## Furnishing Documents to the Secretary of Labor on Request Under ERISA Section 104(a)(6) and Assessment of Civil Penalties Under ERISA Section 502(c)(6)

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** This document contains a final rulemaking under the Employee Retirement Income Security Act of 1974 (ERISA) that implements certain amendments to ERISA added as part of the Taxpayer Relief Act of 1997 (TRA '97). The final rule implements section 104(a)(6) of ERISA by requiring the administrator of an employee benefit plan subject to Part 1 of Title I of ERISA to furnish to the Department, upon request, certain documents relating to the employee benefit plan. The final rule also establishes procedures relating to the assessment of civil penalties for failures or refusals by administrators to furnish requested documents to the Department and establishes procedures for review of such penalties by the Department. The final rule affects employee pension and welfare benefit plans, plan sponsors, administrators and fiduciaries, and plan participants and beneficiaries.

**DATES:** This regulation is effective March 8, 2002.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Fields, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 693–8500 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### A. Background

The Taxpayer Relief Act of 1997 (TRA '97) eliminated the requirement under ERISA that employee benefit plan administrators automatically file

summary plan descriptions (SPDs) and summaries of material plan modifications (SMMs) with the Department. TRA '97 added paragraph (6) to section 104(a) of ERISA which provides that the administrator of any employee benefit plan subject to part 1 of Title I of ERISA is required to furnish to the Department, on request, any documents relating to the employee benefit plan, including but not limited to, the latest SPD (including any summaries of plan changes not contained in the SPD), and the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.[1] TRA '97 also added section 502(c)(6) of ERISA providing the Secretary with the authority to assess civil penalties for a plan administrator's failure to furnish material requested under section 104(a)(6) of ERISA. Specifically, section 502(c)(6) provides that, if within 30 days of a request by the Department, the plan administrator fails to furnish materials requested by the Department, the Department may assess a civil penalty against the administrator of up to $100 a day from the date of such failure, but in no event in excess of $1,000 per request. Section 502(c)(6) also provides that no penalty shall be imposed for failures resulting from matters reasonably beyond the control of the plan administrator.

On August 5, 1999, the Department published a notice in the **Federal Register** (64 FR 42797) inviting public comment on a proposal to add regulations at 29 CFR 2520.104a–8 and 29 CFR 2560.502c–6 that would implement the above TRA '97 amendments. In response to this notice, the Department received four public comment letters. Set forth below is a description of the regulations, and a discussion of public comments received and specific changes from the proposal reflected in the final rule.

**B. Description of Regulations, Comments and Changes**

*Furnishing Documents to the Department on Request Under Section 104(a)(6)*

Section 2520.104a–8 implements section 104(a)(6) of ERISA. As proposed, paragraph (a)(1) of § 2520.104a–8 provides that the administrator (within the meaning of section 3(16)(A) of ERISA) of any employee benefit plan subject to Part 1 of Title I of ERISA has an obligation to furnish to the Department, upon request, any document relating to the plan. Paragraph (a)(2) clarifies that multiple requests under ERISA section 104(a)(6) and § 2520.104a–8 for the same or similar document or documents shall be considered separate requests for purposes of penalties under ERISA section 502(c)(6) and § 2560.502c–6(a). Paragraph (b) of the proposal incorporates the service of notice rules in § 2560.502c–6(i), for purposes of serving the plan administrator with a request under ERISA section 104(a)(6); and paragraph (c) of the proposed regulation describes when a document would be deemed to be received by the Secretary.

Most of the commenters focused on two general issues—what documents will be requested by the Department and on whose behalf the Department will request documents. With regard to the first issue, the commenters expressed concern that the regulation, as proposed, would permit the Department to request, on behalf of participants and beneficiaries, any document relating to the plan, including proprietary, confidential and other plan-related information with respect to which participants and beneficiaries generally would not have access. Commenters argued that the Department should limit its authority to requesting only those documents that a participant or beneficiary is otherwise entitled under section 104(b)(4) of ERISA.[2] The second issue related to commenter concerns that plan-related information would be provided to persons who were not plan participants or beneficiaries. In this regard, the commenters suggested that the final regulation should make clear that the Department will only request documents on behalf of participants and beneficiaries and should include a process that the Department will follow in determining whether a given individual is entitled to obtain documents.

In the preamble to the proposed regulation, the Department indicated that, while section 104(a)(6) conferred broad authority on the Secretary to request documents, the Department generally intended to limit the exercise of its authority under § 2520.104a–8 to requesting SPDs on behalf of participants and beneficiaries. The Department also envisioned that it may intervene to assist a participant and beneficiary in obtaining documents or instruments pursuant to which a plan is established or operated where a plan administrator fails or refuses to respond to the request of a participant or beneficiary.

In response to the concerns of the commenters, the Department has modified the final regulation to more specifically comport with the Department's views expressed in the preamble to the proposed regulation. In this regard, the final regulation specifically limits the application of § 2520.104a–8 to requests from the Department for the latest updated summary plan description (including any summaries of material modifications to the plan or changes in the information required to be included in the summary plan description)[3] and any other documents described in section 104(b)(4) of ERISA with respect to which a participant or beneficiary has requested, in writing, a copy from the plan administrator and which the administrator has failed or refused to furnish to the participant or beneficiary. *See* § 2520.104a–8(a)(1)(i) and (ii).

As revised, the final regulation clearly limits the documents to be requested from plan administrators by the Department on behalf of participants and beneficiaries to those documents with respect to which participants and beneficiaries have a statutory right to examine and obtain copies.[4]

Also, by limiting the circumstances under which the Department will request documents and instruments pursuant to which a plan is established or operated to those where a participant or beneficiary has previously made a written request to the plan for such documents or instruments, plan administrators are afforded the opportunity to raise, with both the requesting individual and the Department, issues concerning the status of the requesting individual as a participant or beneficiary.

[1] Prior to TRA '97, this authority was in section 104(a)(1) of ERISA, which stated that ''the administrator shall also furnish to the Secretary, upon request, any documents relating to the employee benefit plan, including but not limited to the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.''

[2] Under section 104(b)(4) of ERISA, the administrator must, upon written request of any participant or beneficiary, ''furnish a copy of the latest updated summary plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated.''

[3] For purposes of a request by the Department under ERISA section 104(a)(6), any separate documents required to be furnished with the SPD, e.g., a plan's claims procedures provided as a separate document under 29 CFR § 2520.102–3(s), would be considered part of the plan's latest updated summary plan description.

[4] *See* sections 104(b)(2) and 104(b)(4) of ERISA. Also, the Department notes that the final rule relates solely to requests by the Department for documents pursuant to section 104(a)(6) and, accordingly, does not serve to limit or otherwise affect the authority of the Department to request documents pursuant to other provisions of ERISA, including the Department's authority under section 504.

The final regulation does not condition requests for updated summary plan descriptions on a participant or beneficiary first seeking the document directly from the plan. As explained in the preamble to the proposed regulation, the Department believes that the elimination of the SPD filing requirements, taken together with the establishment of civil penalties for failures to furnish requested documents, clearly evidences Congress' intent that the Department would exercise its authority to ensure that participants and beneficiaries would have an independent source for SPDs. The value of such access is predicated on the rights of participants and beneficiaries to choose not to go to the plan or plan sponsor for such information.

In addition to the foregoing, the final rule has been modified to clarify the persons who will be considered participants or beneficiaries for purposes of requests pursuant to section 104(a)(6) and the regulation. A new paragraph (b) was added to the final regulation,[5] provides that a participant or beneficiary will include any individual who is: (i) A participant or beneficiary within the meaning of ERISA sections 3(7) and 3(8), respectively; (ii) an alternate payee under a qualified domestic relations order (see ERISA section 206(d)(3)(K)) or prospective alternate payee (spouses, former spouses, children or other dependents); (iii) a qualified beneficiary under COBRA (see ERISA section 607(3)) or prospective qualified beneficiary (spouse or dependent child); (iv) an alternate recipient under a qualified medical child support order (see ERISA section 609(a)(2)(C)) or a prospective alternate recipient; or (v) a representative of any of the foregoing. In the preamble to the proposed regulation, the Department expressed the view that such persons would be treated as participants and beneficiaries for purposes of the regulation. Upon further consideration, and taking into account there were no public comments objecting to the Department's position on this issue, the Department has determined that, in the interest of clarity, the persons to be treated as participants and beneficiaries for purposes of the regulation should be codified in the regulation.

In addition to the comments discussed above, one commenter suggested that plans should be required to include a notice in their SPDs informing participants and beneficiaries that they can ask the Department for help in obtaining documents from their plan administrator. The Department, as part of a separate rule amending its regulations governing the content of SPDs, made improvements to the ''ERISA statement of rights'' currently required to be included in each SPD pursuant to 29 CFR 2520.102–3(t) to ensure that participants and beneficiaries understand their right to request certain documents from their plan and the availability of assistance from the Department. *See* 65 FR 70226, 70243 (November 21, 2000).

One commenter argued that inasmuch as the plan may charge participants and beneficiaries for copies of documents available under section 104(b)(4) of ERISA, plans should be able to charge the Department for materials furnished in response to requests by the Department on behalf of participants and beneficiaries. The Department notes that there is no statutory basis for permitting the imposition of charges on the Department attendant to costs incurred in connection with requests under section 104(a)(6) of ERISA. Further, in view of the fact that SPDs have been available to participants through the Department's public disclosure room and that Congress, in enacting the TRA '97 changes, intended to ensure that participants have continued access to SPDs through the Department, the Department does not believe passing such charges back to participants would be consistent with Congressional intent. With respect to other documents described in section 104(b)(4) of ERISA, the Department's involvement in requesting such documents will result from the failure or refusal of a plan administrator to furnish the requested documents under circumstances where a reasonable charge could have been imposed for copies. For these reasons, the Department has not modified the regulation in response to the foregoing comments.

One commenter noted that the proposed regulation did not indicate whether the Department will retain copies of documents submitted in response to requests on behalf of participants and beneficiaries, nor did it indicate whether the Department will discard documents that were filed with the Department prior to the enactment of the TRA '97 amendments. The Department does not intend to retain copies of materials furnished in response to requests under ERISA section 104(a)(6) made on behalf of participants and beneficiaries or other persons. In the case of previously filed SPDs and SMMs, the Department is maintaining the SPDs and SMMs filed prior to the TRA '97 amendments. These documents are currently available for examination and copying through PWBA's public disclosure room.

One commenter expressed the view that proposed § 2520.104a–8(c), which provides that ''a document is not considered furnished to the Secretary until the date on which such document is received by the Department of Labor at the address specified in the request,'' should be modified to provide that documents mailed by certified mail will be considered received when mailed. The Department agrees that such a change is appropriate and would establish consistency with the rules governing ''service,'' as set forth in § 2560.502c–6(i), applicable to the assessment of civil penalties for a failure to comply with a request for documents from the Department. Accordingly, paragraph (d) of the final regulation (which was paragraph (c) of the proposal) has been amended to provide that, in the case of documents furnished to the Secretary by certified mail, the document shall be considered received on the date on which the document is mailed to the Department of Labor at the address specified in the request.

One commenter noted that the proposed regulation did not take into account that many multiemployer plans may not always be able to comply with the Department's requests for documents within 30 days. Due to the often decentralized administrative structure of multiemployer plans, necessitated by the large number of participants and contributing employers, the commenter noted that a multiemployer plan's designated plan administrator might not have possession or control of certain documents that the Department may request and such plan administrator may have to locate the person with control of the requested documents and then request copies of the documents from an unaffiliated third party over whom the plan administrator may not be able to exercise any authority. The commenter suggested that the final regulation include a procedure for plans to obtain an extension of time to respond to the Department's request for documents if good cause for the extension is demonstrated, without the imposition of the penalty prescribed in section 502(c)(6) of ERISA or the need for a penalty appeal. In addition, the commenter noted that, in the event multiple requests for documents are received from the Department one after another, the volume of requests may prevent a plan administrator from filing a response within 30 days, and the

[5] Paragraphs (b) and (c) of the proposal have been redesignated as paragraphs (c) and (d) of the final regulation.

commenter recommended that the final regulation should provide that the Department will waive any fines that may otherwise be assessed under section 502(c)(6) of ERISA if the plan administrator demonstrates to the satisfaction of the Department that a timely response was not practicable. Two commenters suggested that a plan administrator should be allowed to initially decline production of documents and challenge the propriety of requests if the plan administrator believes that such documents do not relate to the plan or that they contain information of a confidential or proprietary nature and that a sanction should be stayed pending review of the claim and production of the documents following a decision adverse to the plan administrator. One of these commenters noted that the proposed regulation would subject plan administrators challenging the Department's requests to substantial fines that may only be reduced or waived by engagement in an adjudicatory process with the Department. This commenter noted that such adjudicatory proceedings to appeal the assessment of the Department's fines would result in expenditures of valuable resources that would be better used for providing benefits to plan participants.

The Department believes that most of the concerns raised by these commenters are adequately addressed by the changes to the final rule that clarify the limited range of documents the Department will request under section 104(a)(6). Moreover, the Department believes that the provisions of § 2520.104a–8 and § 2560.502c–6 provide the Department with sufficient flexibility, prior to the assessment of a civil penalty, to take into account matters reasonably beyond the control of a plan administrator that would affect an administrator's ability to comply with a request from the Department in a timely manner. Furthermore, the Department believes that the processes provided in the regulations are sufficiently flexible to enable plan administrators to raise concerns with the Department regarding the production or disclosure of requested documents. In particular, the Department notes that there is nothing in § 2520.104a–8 that would limit the Department's ability to consider, following the issuance of a request for documents, information provided by a plan administrator concerning the administrator's inability to comply with the request in a timely fashion or an administrator's concerns relating to the disclosure of the requested information. In addition, an administrator may, pursuant to § 2560.502c–6(e), submit a statement setting forth why matters reasonably beyond the control of the administrator precluded timely compliance with the Department's request for documents.

*Authority To Assess Civil Penalties for Violations of Section 104(a)(6) of ERISA*

Section 2560.502c–6(a) addresses the general application of section 502(c)(6) of ERISA. Paragraph (a)(1) provides that the administrator, as defined in ERISA section 3(16)(A), of an employee benefit plan is liable for the civil penalties assessed under section 502(c)(6) in each case in which there is a failure or refusal to furnish to the Department any document requested under section 104(a)(6) of ERISA and § 2520.104a–8. Paragraph (a)(2) defines such a failure or refusal as a failure or refusal, in whole or in part, to furnish documents at the time and in the manner prescribed in the request.

Section 2560.502c–6(b) sets forth the amount of penalties that may be assessed under section 502(c)(6) of ERISA. Consistent with the terms of section 502(c)(6) of ERISA, paragraph (b)(1) provides that the Department may assess a penalty of up to $100 per day, but not in excess of $1,000 per request. Paragraph (b)(2) provides that the date of a failure or refusal to furnish any documents requested under section 104(a)(6) of ERISA and § 2520.104a–8 shall not be earlier than the thirtieth day after service of the request.

Section 2560.502c–6(c) provides that, prior to the assessment of any penalty under section 502(c)(6) of ERISA, the Department shall provide the administrator with written notice indicating the Department's intent to assess a penalty, the amount of the penalty, the period to which the penalty applies, and the reason(s) for the penalty. The notice is to be served in accordance with § 2560.502c–6(i) (service of notice provision). Under § 2560.502c–6(f), the notice would become a final order of the Department, within the meaning of § 2570.111(g) (also published as part of this rulemaking), within 30 days of the service of the notice, unless a statement described in § 2560.502c–6(e) is filed with the Department.

Paragraphs (d), (e), (f), (g), and (h) of section 2560.502c–6 generally relate to the waiver of penalties under section 502(c)(6) of ERISA. Paragraph (d) provides that the Department may waive all or part of the penalty to be assessed under section 502(c)(6) upon a showing by the administrator, under paragraph (e), that the failure or refusal to comply with a request under ERISA section 104(a)(6) and § 2520.104a–8 was due to matters reasonably beyond the control of the plan administrator. Under paragraph (e), the administrator has 30 days from receipt of the notice required under § 2560.502c–6(c) within which to make such a showing or offer other reasons why the penalty, as calculated, should not be assessed.[6]

Paragraph (f) provides that a failure to file a timely statement under paragraph (e) will constitute a waiver of the right to appear and contest the facts alleged in the notice (§ 2560.502c–6(c)) for purposes of any adjudicatory proceeding involving the assessment of a penalty under section 502(c)(6) of ERISA.

Paragraph (g)(1) provides that, following a review of the facts alleged in the statement under paragraph (e), the Department shall notify the administrator of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty. Under paragraph (g)(2), this notice becomes a final order 30 days after the date of service of the notice, except as provided in paragraph (h). Paragraph (h) provides that the notice described in paragraph (g) will become the final order of the Department unless, within 30 days of the date of service of the notice, the administrator or representative files a request for a hearing under § 2570.110 *et seq.* (published as part of this rulemaking) and files an answer, in writing, opposing the proposed sanction.

Section 2560.502c–6(i) describes the rules relating to service of the (1) Department's notice of intent to assess a penalty (§ 2560.502c–6(c)), and (2) Department's notice of determination on the statement of matters reasonably beyond the control of the plan administrator (§ 2560.502c–6(g)).[7] Paragraph (i) provides that service shall be made in one of three ways: (1) by delivering a copy at the principal office, place of business, or residence of the administrator or representative thereof; (2) by leaving a copy at the principal office, place of business, or residence of

[6] In the event another fiduciary of the plan has custody of or control over a document requested under ERISA section 104(a)(6) and § 2520.104a–8, or if the administrator engages a third party to perform services for the plan and, pursuant to the engagement, the third party has custody of or control over such a document, the administrator's lack of custody would not be considered by the Department to be a matter reasonably beyond the administrator's control.

[7] As noted above, under § 2520.104a–8(c) these service rules would also apply to the Department's initial request for documents under ERISA section 104(a)(6) and § 2520.104a–8.

the administrator or representative thereof; or (3) by mailing a copy to the last known address of the administrator or representative thereof.

Section 2560.502c–6(j) clarifies the liability of the parties for penalties assessed under section 502(c)(6) of ERISA. Paragraph (1) provides that, if more than one person is responsible as administrator for the failure to furnish document(s) requested by the Department, all such persons shall be jointly and severally liable for such failure. Paragraph (2) provides that any person against whom a penalty is assessed under section 502(c)(6) of ERISA is personally liable for the payment of such penalty. Paragraph (2) also clarifies that liability for the payment of penalties assessed under section 502(c)(6) of ERISA is a personal liability of the person against whom the penalty is assessed and not a liability of the plan.

The Department's Office of Administrative Law Judges (OALJ) commented that, in its experience, various respondents in ERISA proceedings have found that the method for requesting a hearing is confusing. The OALJ suggested that the situation could be improved by changing proposed regulation § 2560.502c–6(h) to read as follows:

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will become the final order of the Department of Labor, unless, within 30 days from the date of the service of the notice, the administrator or representative thereof files a request for a hearing under § 2570.110 *et seq.*, and files an answer to the notice. The request for hearing and answer shall be filed in accordance with § 2570.112. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of § 2560.502c–6.

The OALJ also recommended that proposed § 2570.111(c) be modified to define the term ''Answer'', rather than referencing the definition at § 18.5(d)(1). The term ''Answer'' is defined to mean ''a written statement that is supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to § 2560.502c–6(g).'' The Department has incorporated these recommendations into the final regulation sections 2560.502c–6(h) and 2570.111(c).

With regard to paragraph (i) of § 2560.502c–6, one commenter suggested that service should only be effectuated by the Department's mailing or delivering of the respective documents to the plan administrator's regular place of business, or such other location as the plan may specify in its communication with the Department. With respect to a multiemployer plan that designates its board of trustees as the plan administrator, the commenter noted that service of the Department's request for documents and notice of intent to assess a penalty should be made on the fund office, rather than on the individual trustees, as individual trustees should not be responsible for accepting service unless the trustees are acting in an official capacity. This commenter expressed the view that further clarification is needed with regard to service in the context of multiemployer plans.

The Department does not believe any further clarification of the service requirement is warranted. The proposal states that service of a request for documents or other notices may be served by delivering a copy to the administrator or representative thereof, by leaving a copy at the principal office, place of business or residence of the administrator or representative thereof, or by mailing a copy to the last known address of the administrator or representative thereof. It is the Department's view that application of the service of notice requirement does not need further clarification and, accordingly, the Department is adopting paragraph (i) of § 2560.502c–6 without change.

One commenter stated that the proposed regulation unfairly and unnecessarily requires that any fines assessed under section 502(c)(6) of ERISA be paid by the plan administrator, rather than the plan. The commenter urged the Department to revise the proposed regulation to permit plans to pay any fines that may be assessed under ERISA section 502(c)(6), unless the Department concludes that the plan administrator's failure to furnish the requested documents within the 30-day period was willful.

It is the view of the Department that, in the absence of statutory language to the contrary, liability for payment of civil penalties is a personal liability of the person against whom the penalty is assessed and not the liability of the plan. Accordingly, as noted in the supplementary information accompanying the proposal, the payment of penalties assessed under ERISA section 502(c)(6) from plan assets would not constitute a reasonable expense of administering a plan for purposes of ERISA sections 403 and 404. In contrast, reasonable expenses attendant to compliance with a request from the Department for documents, such as expenses for copying and mailing the requested documents, would constitute reasonable expenses of administering a plan for purposes of ERISA sections 403 and 404.

*Administrative Law Procedures for Assessment of Civil Penalties Under ERISA Section 502(c)(6)*

Except as noted above, § 2570.110, *et seq.*, establishing procedures for hearings before an Administrative Law Judge (ALJ) with respect to assessment by the Department of a civil penalty under ERISA section 502(c)(6) and appealing an ALJ decision to the Secretary or her delegate are being adopted as proposed.

With regard to such procedures, the Secretary has established the Pension and Welfare Benefits Administration (PWBA) within the Department for purposes of carrying out most of the Secretary's responsibilities under ERISA. *See* Secretary's Order 1–87, 52 FR 13139 (April 27, 1987). The Department has already published rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges at 29 CFR part 18 (48 FR 32538 (1983)). As explained in 29 CFR 18.1, those provisions generally govern administrative hearings before ALJs assigned to the Department and are intended to provide maximum uniformity in the conduct of administrative hearings. However, in the event of an inconsistency or conflict between the provisions of 29 CFR part 18 and a rule or procedure required by statute, executive order or regulation, the latter controls.

The Department has reviewed the applicability of the provisions of 29 CFR part 18 to the assessment of civil penalties under ERISA section 502(c)(6) and has decided to adopt many, though not all, of the provisions thereunder for ERISA 502(c)(6) proceedings.

The final rule relates specifically to procedures for assessing civil penalties under section 502(c)(6) of ERISA and is controlling to the extent it is inconsistent with any portion of 29 CFR part 18. The final rule is designed to maintain the rules set forth at 29 CFR part 18 consistent with the need for an expedited procedure, while recognizing the special characteristics of proceedings under ERISA section 502(c)(6). For purposes of clarity, where a particular section of the existing procedural rules would be affected by the final rule, the entire section (with appropriate modifications) has been set out in this document. Thus, only a portion of the provisions of the procedural regulations set forth below involves changes from, or additions to, the rules in 29 CFR part 18. The specific

modifications to the rules in 29 CFR part 18, and their relationship to the conduct of these proceedings generally, are outlined below.

The general applicability of the procedural rules under section 502(c)(6) of ERISA is set forth in § 2570.110. The definition section (§ 2570.111) incorporates the basic adjudicatory principles set forth at 29 CFR part 18, but includes terms and concepts of specific relevance to proceedings under ERISA section 502(c)(6). In particular, § 2570.111 states that the term ''Secretary'' means the Secretary of Labor and includes various individuals to whom the Secretary may delegate authority. The Department contemplates that the duties assigned to the Secretary under the procedural regulation will in fact be discharged by the Assistant Secretary for Pension and Welfare Benefits or his or her delegee.

In general, the burden to initiate adjudicatory proceedings before an ALJ will be on the party (respondent) against whom the Department is seeking to assess a civil penalty under ERISA section 502(c)(6). However, a respondent must comply with the procedures relating to agency review set forth in § 2560.502c–6 before initiating adjudicatory proceedings. Section 2570.111(c) and (d), together with § 2560.502c–6(h), contemplate that a notice issued pursuant to § 2560.502c–6(g) will become the final order of the Department, unless, within 30 days from the date of the service of the notice, the administrator or representative thereof files a request for a hearing under § 2570.110 *et seq.*, and files an answer to the notice.

The service of documents by the parties to an adjudicatory proceeding, as well as by the ALJ, are governed by § 2570.112. Section 2570.114 provides that if the respondent fails to request a hearing by filing an answer to the Department's notice of determination (§ 2560.502c–6(g)) within the 30-day period provided by § 2560.502c–6(h), such failure shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice and shall be deemed to constitute an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(6) of ERISA. Section 2570.114 makes clear that in the event of such failure, the assessment of penalty becomes final.

Section 2570.115 provides that the ALJ's decision shall include the terms and conditions of any consent order or settlement which has been agreed to by the parties. This section also provides that the decision of the ALJ which incorporates such consent order shall become a final agency action within the meaning of 5 U.S.C. 704.

The rules in 29 CFR part 18 concerning the computation of time, pleadings, prehearing conferences and statements, and settlements are adopted in these procedures for adjudications under ERISA section 502(c)(6). The section on the designation of parties (§ 2570.113) differs from its counterpart under § 18.10 of this title in that it specifies that the respondent in these proceedings will, as indicated above, be the party against whom the Department seeks to assess a civil penalty under ERISA section 502(c)(6).

29 CFR 2570.116 states that discovery may be ordered by the ALJ only upon a showing of good cause by the party seeking discovery. This differs from the more liberal standard for discovery contained in 29 CFR 18.14. In cases in which discovery is ordered by the ALJ, the order shall expressly limit the scope and terms of discovery to that for which good cause has been shown. To the extent that the order of the ALJ does not specify rules for the conduct of the discovery permitted by such order, the rules governing the conduct of discovery from 29 CFR part 18 are to be applied in any proceeding under section 502(c)(6) of ERISA. For example, if the order of the ALJ states only that interrogatories on certain subjects may be permitted, the rules under 29 CFR part 18 concerning the service and answering of such interrogatories shall apply. The procedures under 29 CFR part 18 for the submission of facts to the ALJ during the hearing are also to be applied in proceedings under ERISA section 502(c)(6).

The section on summary decisions (§ 2570.117) provides for requisite authorization for an ALJ to issue a summary decision which may become final when there are no genuine issues of material fact in a case arising under ERISA section 502(c)(6). The section concerning the decision of the ALJ (§ 2570.118) differs from its counterpart at § 18.57 of this title in that § 2570.118 states that the decision of the ALJ in an ERISA section 502(c)(6) case shall become the final decision of the Secretary unless a timely appeal is filed.

The procedures for appeals of ALJ decisions under ERISA section 502(c)(6) of ERISA would be governed solely by §§ 2570.119 through 2570.121, and without any reference to the appellate procedures contained in 29 CFR part 18. Section 2570.119 establishes the time limit within which such appeals must be filed, the manner in which the issues for appeal are determined and the procedure for making the entire record before the ALJ available to the Secretary. Section 2570.120 provides that review of the Secretary shall not be on a *de novo* basis, but rather on the basis of the record before the ALJ and without an opportunity for oral argument. Section 2570.121 sets forth the procedure for establishing a briefing schedule for such appeals and states that the decision of the Secretary on such an appeal shall be a final agency action within the meaning of 5 U.S.C. 704. As required by the Administrative Procedure Act (5 U.S.C. 552(a)(2)(A)) all final decisions of the Department under section 502(c)(6) of ERISA shall be compiled in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

**Executive Order 12866 Statement**

Under Executive Order 12866, the Department must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, the Department has determined that this regulatory action is not significant within the meaning of the Executive Order.

The costs of the regulation will be borne by the plan when responding to requests from the Department for copies of the latest SPD and other documents described in section 104(b)(4) of ERISA that a participant or beneficiary has requested, in writing, from the plan administrator and which the administrator has failed or refused to furnish in a timely fashion. The individual cost of each such request is estimated to be minimal because only a participant or beneficiary may make a

request and each administrator of an employee pension or welfare benefit plan covered under Title I of ERISA already is required by section 101(a)(1) to furnish an SPD to each participant covered under the plan and each beneficiary who is receiving benefits under the plan, and to update the SPD on a regular basis in accordance with section 104(b)(1). Moreover, other documents under which the plan is established or operated and that may be requested must be made available to participants and beneficiaries pursuant to section 104(b)(2). Thus, administrators are not expected to incur costs in preparing or obtaining these documents in response to a request from the Department.

The regulation is expected to benefit plan participants and beneficiaries who may have been unable to obtain a current SPD or other document described in ERISA section 104(b)(4), and who might otherwise not have an effective means of obtaining such documents in the absence of the requirement for the plan administrator to file such documents with the Department. The provisions implementing the penalty for failure to furnish such documents on request may serve to ensure timely compliance with such requests.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA '95), the Department submitted the information collection request (ICR) included in this regulation to the Office of Management and Budget (OMB) for review and clearance at the time the Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** (August 5, 1999, 64 FR 42797). OMB approved the ICR under OMB control number 1210–0112. The approval will expire on October 31, 2002. The public is not required to respond to an information collection request unless it displays a currently valid OMB control number.

The estimated burden cost has been adjusted in response to a revision in the terms of the proposal. In this final rule, the Department has adopted a commenter's suggestion that documents delivered by certified mail be considered received on the date the document is mailed instead of the date the document is actually received. Although the use of certified mail is not required, both the comment and the provisions of this final rule suggest that plan administrators do find it reasonable from time to time to use certified mail for important communications. To account for this in burden estimates, the mailing cost assumption has been increased to $4 per request from the $1 used for the proposal's estimate.

*Agency:* Pension and Welfare Benefits Administration, Department of Labor.

*Title:* Furnishing Documents to the Secretary of Labor on Request under ERISA Section 104(a)(6) and Assessment of Civil Penalties Under ERISA Section 502(c)(6).

*OMB Number:* 1210–0112.

*Affected Public:* Individuals or households, Business or other for-profit institutions; Not-for-profit institutions.

*Frequency of Response:* On occasion.

*Total Respondents:* 1,000.

*Total Responses:* 1,000.

*Estimated Burden Hours:* 95.

*Estimated Annual Costs (Operating and Maintenance):* $4,000.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires that the agency present a final regulatory flexibility analysis at the time of the publication of the notice of final rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of analysis under the RFA, PWBA continues to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for simplified annual reporting and disclosure if the statutory requirements of Part 1 of Title I of ERISA would otherwise be inappropriate for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at §§ 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and which satisfy certain other requirements.

Further, while some large employers may have small plans, in general, most small plans are maintained by small employers. Thus, PWBA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (5 U.S.C. 631 *et seq.*). PWBA solicited comments on the use of this standard for evaluating the effects of the proposal on small entities. No comments were received with respect to the standard. Therefore, a summary of the final regulatory flexibility analysis based on the 100 participant size standard is presented below. This final regulation is not expected to have a significant impact on small plans.

This regulation applies to all small employee benefit plans covered by Title I of ERISA. Employee benefit plans with fewer than 100 participants include 655,000 pension plans, 2.6 million health plans, and 3.4 million non-health welfare plans (mainly life and disability insurance plans). Nonetheless, the Department estimates few of these small plans will be affected by the regulation because plans will receive relatively few requests for SPDs and other documents described under section 104(b)(4) that a participant or beneficiary has requested, in writing, from the plan administrator and which the administrator has failed or refused to furnish in a timely fashion. The Department estimates about 1,000 requests for assistance by participants and beneficiaries in obtaining SPDs and other such documents per year, based on the actual rate of requests to the Public Disclosure Room during the last two years, adjusted for requests expected to be made with other offices. The percentage of these requests that pertain to small plans is unknown. However, even if it is assumed that all plans that receive requests for documents pursuant to section 104(a)(6) are small plans, the number affected in any year is very small (i.e., 1,000 of approximately 6.6 million plans).

The Department also believes that the time required to respond to a request under the regulation for an SPD or other document under which a plan was established or operated will be minimal. Responding to a request primarily requires clerical skills, although a professional may read the request and

direct others to respond. The documents to be mailed in response to the request are expected to be readily available, so accumulating and mailing the documents is expected to take about 5 minutes. If it is assumed that a cost is incurred for this time at a rate of $20 per hour and that the maximum mailing cost per request is $4, the total cost per request is estimated at less than $6. This total cost is not expected to constitute a significant impact for any plan. For the purposes of this final RFA analysis, PWBA has increased the assumed labor rate from $11 to $20 to account for inflation, and the estimated mailing cost from $1 to $4, to account for the fact that some plans may make use of certified mail in responding to requests from the Department.

Further, the regulation is intended to assist small plan administrators by providing sufficient information for them to understand the request and the process they may use to offer a reasonable cause for failure to comply if they are unable to do so within the initial deadline, by ensuring that they receive notice before the assessment of a penalty is initiated.

**Small Business Regulatory Enforcement Fairness Act**

The rule is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review. The rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Unfunded Mandates Reform Act**

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, nor does it include mandates which may impose an annual burden of $100 million or more on the private sector.

**Federalism Statement**

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, 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 does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. This final rule implements the requirement that administrators of an employee benefit plan furnish the Department, on request, the latest SPD and any other documents described under section 104(b)(4) that a participant or beneficiary has requested, in writing, from the plan administrator and which the administrator has failed or refused to furnish in a timely fashion. The final rule also establishes procedures relating to the assessments of civil penalties for failure to furnish such requested SPDs and documents and procedures for review of such penalties by the Department. The requirements implemented in this final rule do not alter the fundamental reporting and disclosure requirements or penalty provisions of the statute with respect to employee benefit plans, and as such have no implications for the States or the relationship or distribution of power between the national government and the States.

**Statutory Authority**

These final regulations set forth herein are issued pursuant to the authority contained in sections 505, 104(a), and 502(c)(6) of ERISA (Pub. L. 93–406, 88 Stat. 894, 29 U.S.C. 1024, 1132, and 1135).

**List of Subjects**

*29 CFR Part 2520*

Accountants, Disclosure requirements, Employee benefit plans, Pension plans, and Reporting and recordkeeping requirements.

*29 CFR Part 2560*

Claims, Employee benefit plans, Law enforcement, Pensions.

*29 CFR Part 2570*

Administrative practice and procedure, Employee benefit plans, Party in interest, Law enforcement, Pensions, Prohibited transactions.

In view of the foregoing, Parts 2520, 2560, and 2570 of Chapter XXV of title 29 of the Code of Federal Regulations are amended as follows:

## PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for part 2520 continues to read as follows:

**Authority:** Secs. 101, 102, 103, 104, 105, 109, 110, 111 (b)(2), 111 (c), and 505, Pub. L. 93–406, 88 Stat. 840–52 and 894 (29 U.S.C. 1021–1025, 1029–31, and 1135); Secretary of Labor's Order No. 27–74, 13–76, 1–87, and Labor Management Services Administration Order 2–6.

Sections 2520.102–3, 2520.104b–1, and 2520.104b–3 also are issued under sec. 101(a), (c), and (g)(4) of Pub. L. 104–191, 110 Stat. 1936, 1939, 1951 and 1955 and, sec. 603 of Pub. L. 104–204, 110 Stat. 2935 (29 U.S.C. 1185 and 1191c).

2. Add § 2520.104a–8 to read as follows:

**§ 2520.104a–8 Requirement to furnish documents to the Secretary of Labor on request.**

(a) *In general.* (1) Under section 104(a)(6) of the Act, the administrator of an employee benefit plan subject to the provisions of part 1 of title I of the Act is required to furnish to the Secretary, upon request, any documents relating to the employee benefit plan. For purposes of section 104(a)(6) of the Act, the administrator of an employee benefit plan shall furnish to the Secretary, upon service of a written request, a copy of:

(i) The latest updated summary plan description (including any summaries of material modifications to the plan or changes in the information required to be included in the summary plan description); and

(ii) Any other document described in section 104(b)(4) of the Act with respect to which a participant or beneficiary has requested, in writing, a copy from the plan administrator and which the administrator has failed or refused to furnish to the participant or beneficiary.

(2) *Multiple requests for document(s).* Multiple requests under this section for the same or similar document or documents shall be considered separate requests for purposes of § 2560.502c–6(a).

(b) For purposes of this section, a participant or beneficiary will include any individual who is:

(1) A participant or beneficiary within the meaning of ERISA sections 3(7) and 3(8), respectively;

(2) An alternate payee under a qualified domestic relations order (see ERISA section 206(d)(3)(K)) or prospective alternate payee (spouses, former spouses, children or other dependents);

(3) A qualified beneficiary under COBRA (see ERISA section 607(3)) or prospective qualified beneficiary (spouse or dependent child);

(4) An alternate recipient under a qualified medical child support order (see ERISA section 609(a)(2)(C)) or a prospective alternate recipient; or

(5) A representative of any of the foregoing.

(c) *Service of request.* Requests under this section shall be served in accordance with § 2560.502c–6(i).

(d) *Furnishing documents.* A document shall be deemed to be furnished to the Secretary on the date the document is received by the Department of Labor at the address specified in the request; or, if a document is delivered by certified mail, the date on which the document is mailed to the Department of Labor at the address specified in the request.

## PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

3. The authority citation for part 2560 continues to read as follows:

**Authority:** Secs. 502, 505 of ERISA, 29 U.S.C. 1132, 1135, and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

Section 2560.502–1 also issued under sec. 502(b)(2), 29 U.S.C. 1132(b)(2)

Section 2560.502i–1 also issued under sec. 502(i), 29 U.S.C. 1132(i).

Section 2560.503–1 also issued under sec. 503, 29 U.S.C. 1133.

4. Add § 2560.502c–6 to read as follows:

### § 2560.502c–6 Civil penalties under section 502(c)(6).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(6) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator (within the meaning of section 3(16)(A) of the Act) of an employee benefit plan (within the meaning of section 3(3) of the Act and § 2510.3–1 of this chapter) shall be liable for civil penalties assessed by the Secretary under section 502(c)(6) of the Act in each case in which there is a failure or refusal to furnish to the Secretary documents requested under section 104(a)(6) of the Act and § 2520.104a–8 of this chapter.

(2) For purposes of this section, a failure or refusal to furnish documents shall mean a failure or refusal to furnish, in whole or in part, the documents requested under section 104(a)(6) of the Act and § 2520.104a–8 of this chapter at the time and in the manner prescribed in the request.

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(6) of the Act shall be an amount up to $100 a day determined by the Department of Labor, taking into consideration the amount of willfulness of the failure or refusal to furnish the documents requested under section 104(a)(6) of the Act, but in no event in excess of $1,000 per request. Subject to paragraph (b)(2) of this section, the amount shall be computed from the date of the administrator's failure or refusal to furnish any document or documents requested by the Department.

(2) For purposes of calculating the amount to be assessed under this section, the date of a failure or refusal to furnish documents shall not be earlier than the thirtieth day after service of the request under section 104(a)(6) of ERISA and § 2520.104a–8 of this chapter.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(6) of the Act, the Department shall provide to the administrator of the plan a written notice that indicates the Department's intent to assess a penalty under section 502(c)(6) of the Act, the amount of the penalty, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Waiver of assessed penalty.* The Department may waive all or part of the penalty to be assessed under section 502(c)(6) of the Act on a showing by the administrator that the failure or refusal to furnish a document or documents requested by the Secretary was the result of matters reasonably beyond the administrator's control.

(e) *Statement showing matters reasonably beyond the control of the plan administrator.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have 30 days from the date of the service of the notice, as described in paragraph (i) of this section, to file a statement that the failure resulted from matters reasonably beyond the control of the administrator or that the penalty, as calculated, should not be assessed. The statement must be in writing and set forth all the facts alleged as matters reasonably beyond the control of the administrator. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of matters reasonably beyond the control of the plan administrator.* Failure to file a statement of matters reasonably beyond the control of the administrator within the 30-day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(6) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.111(g) of this chapter.

(g) *Notice of determination on statement of matters reasonably beyond the control of the plan administrator.* (1) The Department, following a review of all of the facts alleged in support of a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (b) of this section. This notice is a ''pleading'' for purposes of § 2570.111(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) indicating the Department's intention to assess a penalty shall become a final order, within the meaning of § 2570.111(g) of this chapter, 30 days after the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will become the final order of the Department of Labor, unless, within 30 days from the date of the service of the notice, the administrator or representative thereof files a request for a hearing under § 2570.110 through 2570.121 of this chapter, and files an answer to the notice. The request for hearing and answer shall be filed in accordance with § 2570.112 of this chapter. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notice.* (1) Service of notice under this section shall be made by:

(i) Delivering a copy to the administrator or representative thereof;

(ii) Leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) Mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If done by regular mail, service is complete upon receipt by the addressee.

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to furnish the document or documents requested under section 104(a)(6) of the Act and its implementing regulations (§ 2520.104a–8 of this chapter), all such persons shall be jointly and severally liable with respect to such failure.

(2) Any person, or persons under paragraph (j)(1) of this section, against whom a civil penalty has been assessed under section 502(c)(6) of the Act pursuant to a final order, within the meaning of § 2570.111(g) of this chapter, shall be personally liable for the payment of such penalty.

(k) *Cross-reference.* See §§ 2570.110 through 2570.121 of this chapter for procedural rules relating to administrative hearings under section 502(c)(6) of the Act.

## PART 2570—PROCEDURAL REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

5. Revise the authority citation for Part 2570 to read as set forth below:

**Authority:** 29 U.S.C. 1108 (a), 1132 (c), 1132 (i), 1135; 5 U.S.C. 8477(c)(3); Reorganization Plan no. 4 of 1978; Secretary of Labor's Order 1–87.

Subpart A is also issued under 29 U.S.C. 1132(c)(1).

Subpart F is also issued under sec. 4, Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by sec. 31001(s)(1), Pub. L. 104–134, 110 Stat. 1321–373.

6. Add new Subpart F to part 2570 to read as follows:

### Subpart F—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(6)

Sec.

2570.110 Scope of rules.
2570.111 Definitions.
2570.112 Service: Copies of documents and pleadings.
2570.113 Parties, how designated.
2570.114 Consequences of default.
2570.115 Consent order or settlement.
2570.116 Scope of discovery.
2570.117 Summary decision.
2570.118 Decision of the administrative law judge.
2570.119 Review by the Secretary.
2570.120 Scope of review.
2570.121 Procedures for review by the Secretary.

### Subpart F—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(6)

#### § 2570.110 Scope of rules.

The rules of practice set forth in this subpart are applicable to ''502(c)(6) civil penalty proceedings'' (as defined in § 2570.111(n) of this subpart) under section 502(c)(6) of the Employee Retirement Income Security Act of 1974. The rules of procedure for administrative hearings published by the Department's Office of Law Judges at Part 18 of this title will apply to matters arising under ERISA section 502(c)(6) except as modified by this section. These proceedings shall be conducted as expeditiously as possible, and the parties shall make every effort to avoid delay at each stage of the proceedings.

#### § 2570.111 Definitions.

For section 502(c)(6) civil penalty proceedings, this section shall apply in lieu of the definitions in § 18.2 of this title:

(a) *Adjudicatory proceeding* means a judicial-type proceeding before an administrative law judge leading to the formulation of a final order;

(b) *Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) *Answer* means a written statement that is supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to § 2560.502c–6(g) of this chapter;

(d) *Commencement of proceeding* is the filing of an answer by the respondent;

(e) *Consent agreement* means any written document containing a specified proposed remedy or other relief acceptable to the Department and consenting parties;

(f) *ERISA* means the Employee Retirement Income Security Act of 1974, as amended;

(g) *Final order* means the final decision or action of the Department of Labor concerning the assessment of a civil penalty under ERISA section 502(c)(6) against a particular party. Such final order may result from a decision of an administrative law judge or the Secretary, the failure of a party to file a statement of matters reasonably beyond the control of the plan administrator described in § 2560.502c–6(e) of this chapter within the prescribed time limits, or the failure of a party to invoke the procedures for hearings or appeals under this title within the prescribed time limits. Such a final order shall constitute final agency action within the meaning of 5 U.S.C. 704;

(h) *Hearing* means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission, to the administrative law judge;

(i) *Order* means the whole or any part of a final procedural or substantive disposition of a matter under ERISA section 502(c)(6);

(j) *Party* includes a person or agency named or admitted as a party to a proceeding;

(k) *Person* includes an individual, partnership, corporation, employee benefit plan, association, exchange or other entity or organization;

(l) *Petition* means a written request, made by a person or party, for some affirmative action;

(m) *Pleading* means the notice as defined in § 2560.502c–6(g) of this chapter, the answer to the notice, any supplement or amendment thereto, and any reply that may be permitted to any answer, supplement or amendment;

(n) *502(c)(6) civil penalty proceeding* means an adjudicatory proceeding relating to the assessment of a civil penalty provided for in section 502(c)(6) of ERISA;

(o) *Respondent* means the party against whom the Department is seeking to assess a civil sanction under ERISA section 502(c)(6);

(p) *Secretary* means the Secretary of Labor and includes, pursuant to any delegation of authority by the Secretary, any assistant secretary (including the Assistant Secretary for Pension and Welfare Benefits), administrator, commissioner, appellate body, board, or other official; and

(q) *Solicitor* means the Solicitor of Labor or his or her delegate.

#### § 2570.112 Service: Copies of documents and pleadings.

For 502(c)(6) penalty proceedings, this section shall apply in lieu of § 18.3 of this title.

(a) *General.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, 800 K Street, NW., Suite 400, Washington, DC 20001–8002, or to the OALJ Regional Office to which the proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties.* All motions, petitions, pleadings, briefs, or other documents

shall be filed with the Office of Administrative Law Judges with a copy, including any attachments, to all other parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The Department shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA section 502(c)(6) Proceeding, P.O. Box 1914, Washington, DC 20013. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* Service of orders, decisions and all other documents shall be made by regular mail to the last known address.

(d) *Form of pleadings.* (1) Every pleading shall contain information indicating the name of the Pension and Welfare Benefits Administration (PWBA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Office of Administrative Law Judges and a designation of the type of pleading or paper (e.g., notice, motion to dismiss, etc.). The pleading or paper shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size 8½ × 11 inch paper.

(2) Illegible documents, whether handwritten, typewritten, photocopied, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

**§ 2570.113 Parties, how designated.**

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.10 of this title.

(a) The term ''party'' wherever used in this subpart shall include any natural person, corporation, employee benefit plan, association, firm, partnership, trustee, receiver, agency, public or private organization, or government agency. A party against whom a civil penalty is sought shall be designated as ''respondent''. The Department shall be designated as the ''complainant''.

(b) Other persons or organizations shall be permitted to participate as parties only if the administrative law judge finds that the final decision could directly and adversely affect them or the class they represent, that they may contribute materially to the disposition of the proceedings and their interest is not adequately represented by existing parties, and that in the discretion of the administrative law judge the participation of such persons or organizations would be appropriate.

(c) A person or organization not named as a respondent wishing to participate as a party under this section shall submit a petition to the administrative law judge within fifteen (15) days after the person or organization has knowledge of or should have known about the proceeding. The petition shall be filed with the administrative law judge and served on each person or organization who has been made a party at the time of filing. Such petition shall concisely state:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner intends to present witnesses.

(d) Objections to the petition may be filed by a party within fifteen (15) days of the filing of the petition. If objections to the petition are filed, the administrative law judge shall then determine whether petitioner has the requisite interest to be a party in the proceedings, as defined in paragraph (b) of this section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the administrative law judge may request all such petitioners to designate a single representative, or he or she may recognize one or more of such petitioners. The administrative law judge shall give each such petitioner, as well as the parties, written notice of the decision on his or her petition. For each petition granted, the administrative law judge shall provide a brief statement of the basis of the decision. If the petition is denied, he or she shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae.

**§ 2570.114 Consequences of default.**

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.5 (a) and (b) of this title. Failure of the respondent to file an answer to the notice of determination described in § 2560.502c–6(g) of this chapter within the 30-day period provided by § 2560.502c–6(h) of this chapter shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the notice of determination, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(6) of the Act. Such notice shall then become the final order of the Secretary.

**§ 2570.115 Consent order or settlement.**

For 502(c)(6) civil penalty proceedings, the following shall apply in lieu of § 18.9 of this title.

(a) *General.* At any time after the commencement of a proceeding, but at least five (5) days prior to the date set for hearing, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. The allowance of such a deferral and the duration thereof shall be in the discretion of the administrative law judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of reaching an agreement which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice and the agreement;

(3) A waiver of any further procedural steps before the administrative law judge;

(4) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(5) That the order and decision of the administrative law judge shall be final agency action.

(c) *Submission.* On or before the expiration of the time granted for negotiations, but, in any case, at least five (5) days prior to the date set for hearing, the parties or their authorized representative or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order to the administrative law judge; or

(2) Notify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action subject to compliance with the terms of the settlement; or

(3) Inform the administrative law judge that agreement cannot be reached.

(d) *Disposition.* In the event a settlement agreement containing

consent findings and an order is submitted within the time allowed therefor, the administrative law judge shall issue a decision incorporating such findings and agreement within 30 days of his receipt of such document. The decision of the administrative law judge shall incorporate all of the findings, terms, and conditions of the settlement agreement and consent order of the parties. Such decision shall become final agency action within the meaning of 5 U.S.C. 704.

(e) *Settlement without consent of all parties.* In cases in which some, but not all, of the parties to a proceeding submit a consent agreement to the administrative law judge, the following procedure shall apply:

(1) If all of the parties have not consented to the proposed settlement submitted to the administrative law judge, then such non-consenting parties must receive notice, and a copy, of the proposed settlement at the time it is submitted to the administrative law judge;

(2) Any non-consenting party shall have fifteen (15) days to file any objections to the proposed settlement with the administrative law judge and all other parties;

(3) If any party submits an objection to the proposed settlement, the administrative law judge shall decide within 30 days after receipt of such objections whether he shall sign or reject the proposed settlement. Where the record lacks substantial evidence upon which to base a decision or there is a genuine issue of material fact, then the administrative law judge may establish procedures for the purpose of receiving additional evidence upon which a decision on the contested issues may reasonably be based;

(4) If there are no objections to the proposed settlement, or if the administrative law judge decides to sign the proposed settlement after reviewing any such objections, the administrative law judge shall incorporate the consent agreement into a decision meeting the requirements of paragraph (d) of this section.

**§ 2570.116 Scope of discovery.**

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.14 of this title.

(a) A party may file a motion to conduct discovery with the administrative law judge. The motion for discovery shall be granted by the administrative law judge only upon a showing of good cause. In order to establish ''good cause'' for the purposes of this section, a party must show that the discovery requested relates to a genuine issue as to a material fact that is relevant to the proceeding. The order of the administrative law judge shall expressly limit the scope and terms of discovery to that for which ''good cause'' has been shown, as provided in this paragraph.

(b) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon showing that the party seeking discovery has substantial need of the materials or information in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials or information by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representatives of a party concerning the proceeding.

**§ 2570.117 Summary decision.**

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.41 of this title.

(a) *No genuine issue of material fact.* (1) Where no issue of a material fact is found to have been raised, the administrative law judge may issue a decision which, in the absence of an appeal pursuant to §§ 2570.119 through 2570.121 of this subpart, shall become a final order.

(2) A decision made under this paragraph (a) shall include a statement of:

(i) Findings of fact and conclusions of law, and the reasons therefor, on all issues presented; and

(ii) Any terms and conditions of the rule or order.

(3) A copy of any decision under this paragraph shall be served on each party.

(b) *Hearings on issues of fact.* Where a genuine question of a material fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing.

**§ 2570.118 Decision of the administrative law judge.**

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.57 of this title.

(a) *Proposed findings of fact, conclusions, and order.* Within twenty (20) days of the filing of the transcript of the testimony, or such additional time as the administrative law judge may allow, each party may file with the administrative law judge, subject to the judge's discretion, proposed findings of fact, conclusions of law, and order together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the administrative law judge.* Within a reasonable time after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within 30 days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the administrative law judge shall make his or her decision. The decision of the administrative law judge shall include findings of fact and conclusions of law with reasons therefor upon each material issue of fact or law presented on the record. The decision of the administrative law judge shall be based upon the whole record. In a contested case in which the Department and the Respondent have presented their positions to the administrative law judge pursuant to the procedures for 502(c)(6) civil penalty proceedings as set forth in this subpart, the penalty (if any) which may be included in the decision of the administrative law judge shall be limited to the penalty expressly provided for in section 502(c)(6) of ERISA. It shall be supported by reliable and probative evidence. The decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704 unless an appeal is made pursuant to the procedures set forth in §§ 2570.119 through 2570.121.

**§ 2570.119 Review by the Secretary.**

(a) The Secretary may review a decision of an administrative law judge. Such a review may occur only when a party files a notice of appeal from a decision of an administrative law judge within twenty (20) days of the issuance of such decision. In all other cases, the decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704.

(b) A notice of appeal to the Secretary shall state with specificity the issue(s) in the decision of the administrative law judge on which the party is seeking review. Such notice of appeal must be served on all parties of record.

(c) Upon receipt of a notice of appeal, the Secretary shall request the Chief Administrative Law Judge to submit to

him or her a copy of the entire record before the administrative law judge.

**§ 2570.120 Scope of review.**

The review of the Secretary shall not be a *de novo* proceeding but rather a review of the record established before the administrative law judge. There shall be no opportunity for oral argument.

**§ 2570.121 Procedures for review by the Secretary.**

(a) Upon receipt of the notice of appeal, the Secretary shall establish a briefing schedule which shall be served on all parties of record. Upon motion of one or more of the parties, the Secretary may, in his or her discretion, permit the submission of reply briefs.

(b) The Secretary shall issue a decision as promptly as possible after receipt of the briefs of the parties. The Secretary may affirm, modify, or set aside, in whole or in part, the decision on appeal and shall issue a statement of reasons and bases for the action(s) taken. Such decision by the Secretary shall be final agency action within the meaning of 5 U.S.C. 704.

Signed at Washington, DC, this 22nd day of December, 2001.

**Ann L. Combs,**

*Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 02–141 Filed 1–4–02; 8:45 am]

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# Part II

# Department of Labor

**Pension and Welfare Benefits Administration**

**29 CFR Parts 2520, 2560, and 2570**

**Removal of Superseded Regulations Relating to Plan Descriptions and Summary Plan Descriptions, and Other Technical Conforming Amendments; Final Rule**

**Furnishing Documents To The Secretary of Labor on Request Under ERISA Section 104(a)(6) And Assessment Of Civil Penalties Under ERISA Section 502(c)(6); Final Rule**

**DEPARTMENT OF LABOR**

**Pension and Welfare Benefits Administration**

**29 CFR Parts 2520 and 2560**

**RIN 1210–AA66**

## Removal of Superseded Regulations Relating to Plan Descriptions and Summary Plan Descriptions, and Other Technical Conforming Amendments

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** This document contains a final rulemaking that removes certain provisions from the Code of Federal Regulations (CFR) that were superseded, in whole or in part, by amendments of the Employee Retirement Income Security Act of 1974 (ERISA) enacted as part of section 1503 of the Taxpayer Relief Act of 1997 (TRA ''97). These TRA ''97 amendments eliminated the ERISA requirements that plan administrators file summary plan descriptions (SPDs) and summaries of material modifications (SMMs) with the Department of Labor (Department). The amendments also eliminated all requirements pertaining to plan descriptions. In addition to removing superseded regulations from the CFR, this final rule makes miscellaneous technical amendments to the CFR designed to correct affected cross-references. The final rule affects employee pension and welfare benefit plans, plan sponsors, administrators and fiduciaries, and plan participants and beneficiaries.

**DATES:** The amendments contained herein will be effective March 8, 2002. The amendments contained herein will be applicable as of the August 5, 1997 effective date of section 1503 of TRA '97.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Fields, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 693–8500 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### 1. Overview

On August 5, 1999, the Department published in the **Federal Register** (64 FR 42792) a proposed rule to implement certain amendments to ERISA added as part of TRA '97. TRA '97 amended sections 101(b), 102, and 104(a)(1) of ERISA to eliminate the requirements that plan administrators file SPDs, SMMs, and plan descriptions with the Department.[1] TRA '97 also amended section 104(b) of ERISA to eliminate the requirement that plan administrators furnish plan descriptions to participants and beneficiaries. These statutory amendments superseded, in whole or in part, the Department's regulations that implemented the SPD, SMM, and plan description filing requirements. This final rule removes those superseded regulations from the CFR.[2] This final rule also makes several technical conforming amendments to reflect the fact that certain regulatory provisions granting relief from certain plan description, SPD, and SMM requirements have also been superseded and rendered obsolete by the TRA '97 amendments. Finally, the final rule corrects affected regulatory and statutory cross-references in parts 2520 and 2560 of Chapter XXV of Title 29 of the CFR. A chart identifying each regulation that is changed by this final rule is printed below.

### 2. Public Comments and Adoption of Final Rule

The Department received no comments concerning the proposal, and the final rule being adopted herein is substantially in the form proposed. A technical conforming change to 29 CFR 2520.104b–2(g) that was inadvertently omitted from the proposal has been added to the final rule.

### 3. Summary of Final Rule

This final rule removes, some in whole and some in part, the following superseded regulations from 29 CFR part 2520. This final rule also reserves certain removed sections of the CFR to preserve the continuity of codification in the CFR.

*A. Removal of Regulations Superseded in Whole*

This final rule removes and reserves sections 2520.102–1 and 2520.104a–2 because they were superseded by paragraphs (a) and (c) of section 1503 of TRA '97 which eliminated sections 101(b)(2) and 104(a)(1)(B) of ERISA. The removed regulations required plan administrators to file a plan description with the Department in accordance with sections 101(b)(2) and 104(a)(1)(B) of ERISA. *See supra* note 1.

This final rule removes and reserves section 2520.104a–3 because it was superseded by paragraphs (a) and (c) of section 1503 of TRA '97 which eliminated sections 101(b)(1) and 104(a)(1)(C) of ERISA. The removed regulation implemented the requirement in sections 101(b)(1) and 104(a)(1)(C) of ERISA that plan administrators file with the Department a copy of any SPD that is required to be furnished to participants covered under the plan and beneficiaries receiving benefits under the plan.

This final rule removes and reserves sections 2520.104a–4 and 2520.104a–7 because they were superseded by paragraphs (a) and (c) of section 1503 of TRA '97 which eliminated sections 101(b)(3), 102(a)(2), and 104(a)(1)(D) of ERISA. The removed regulations implemented sections 101(b)(3), 102(a)(2), and 104(a)(1)(D) of ERISA which required plan administrators to file with the Department a copy of summaries of material modifications in the terms of the plan and summaries of any changes in the information required to be in the SPD.

*B. Removal of Regulations Superseded in Part*

This final rule amends section 2520.104–20 to reflect the fact that certain reporting relief granted by that regulation is no longer needed in light of TRA '97. Specifically, section 2520.104–20 exempts certain unfunded or insured welfare plans with fewer than 100 participants from, among others, the requirements to file plan descriptions, SPDs, and SMMs with the Department. Inasmuch as plan descriptions, SPDs, and SMMs are no longer required to be filed under ERISA as amended by TRA '97, this final rule amends section 2520.104–20(a) to remove the provisions that granted relief from those filing requirements.

This final rule similarly amends section 2520.104–21 to reflect the fact

[1] Prior to 1979, the administrator of an employee benefit plan subject to the provisions of Part 1 of Title I of ERISA was required to file with the Department a plan description (Form EBS–1) to satisfy the statutory filing requirements of section 104(a) and 29 CFR 2520.104a–2. *See* 41 FR 16957 (April 23, 1976). In 1979, the Department amended 29 CFR 2520.104a–2 (44 FR 31639 (June 1, 1979)), to provide that the administrator would satisfy the plan description filing requirements of section 104(a)(1)(B) by filing with the Department SPDs and updated SPDs in accordance with section 104(a)(1)(C) and the regulations thereunder.

[2] The Department is also publishing in today's **Federal Register** a separate final rule to implement related TRA '97 amendments that added sections 502(c)(6) and 104(a)(6) to Title I of ERISA. Section 104(a)(6) provides that the administrator of any employee benefit plan must furnish to the Department, upon request, any documents relating to the employee benefit plan, including but not limited to, the latest SPD, and the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated. Section 502(c)(6) provides that if, within 30 days of a request by the Department to a plan administrator for documents under section 104(a)(6), the plan administrator fails to furnish the material requested to the Department, the Department may assess a civil penalty against the plan administrator of up to $100 a day from the date of such failure, but in no event in excess of $1,000 per request.

that the SPD, SMM, and plan description filing relief granted by that regulation is no longer needed in light of the TRA '97 elimination of those filing requirements. Specifically, section 2520.104–21 provides a limited exemption from, among others, the requirements to file SPDs, SMMs, and plan descriptions with the Department for welfare benefit plans that cover fewer than 100 participants at the beginning of the plan year, are part of a group insurance arrangement within the meaning of the regulation, and that otherwise satisfy the conditions of section 2520.104–21(b). This final rule amends section 2520.104–21(a) by removing the provisions on filing SPDs, SMMs, and plan descriptions because these documents are no longer required to be filed under ERISA as amended by TRA '97.[3]

This final rule amends sections 2520.104–20(c) and 2520.104–21(c) to confirm that, under the exemption, plan administrators continue to be obligated to furnish certain information to the Secretary on request by changing the reference in these subsections from section 104(a)(1) to section 104(a)(6). The amendments made by this final rule do not otherwise change the relief available in sections 2520.104–20 and 2520.104–21.

This final rule further amends sections 2520.104–20 and 2520.104–21 to reflect the fact that the relief granted by those regulations from the requirement to disclose plan descriptions is no longer needed in light of the TRA '97 elimination of all plan description requirements from Title I of ERISA. These regulations exempted eligible welfare plans from the requirements to (1) furnish upon written request of any participant or beneficiary a copy of the plan description and (2) make copies of the plan description available in the principal office of the administrator and such other places as may be necessary for examination by any participant or beneficiary. This final rule amends sections 2520.104–20(a)(2) and (a)(3) and 2520.104–21(a)(1) and (a)(2) by removing the provisions on disclosing plan descriptions because plan descriptions are no longer required to be furnished or made available under ERISA as amended by TRA '97.

This final rule amends sections 2520.104–26 and 2520.104–27 to reflect the fact that the relief granted by those regulations from the requirements to file plan descriptions, SPDs, and SMMs is no longer needed in light of the TRA '97 elimination of those filing requirements. These regulations provided certain unfunded dues financed welfare and pension plans maintained by employee organizations with a limited exemption from, among others, the requirement to file plan descriptions and a simplified option for complying with the filing and disclosure requirements applicable to SPDs. This final rule amends sections 2520.104–26 and 2520.104–27 by removing the provisions on plan descriptions and further amends sections 2520.104–26 and 2520.104–27 to remove the simplified option for complying with the SPD filing requirements because plan descriptions and SPDs are no longer required to be filed with the Department under ERISA as amended by TRA '97. The amendments made by this final rule do not otherwise change the relief available in section 2520.104–26 and 2520.104–27.

### *C. Technical Conforming Amendments*

This final rule also makes technical changes that are needed to conform certain cross-references in 29 CFR parts 2520 and 2560 to sections of ERISA as amended by TRA '97. For example, regulation section 2520.104–43(a) refers to ERISA section 104(a)(1)(A) as the authority for the requirement to file annual reports with the Department. After TRA '97, the correct citation is to section 104(a)(1) of ERISA. Similar technical changes have also been made to conform internal CFR cross-references.[4]

### *D. Quick Reference Chart*

The chart below is intended to provide interested persons with a quick reference tool for identifying each section of 29 CFR parts 2520 and 2560 that is being amended by this final rule. For each regulation section being amended, the chart lists, in separate columns, what is being removed, what is being added, and a brief statement of the reason for the change.

QUICK REFERENCE CHART

| CFR section(s) | Remove | Add | Reason(s) |
|---|---|---|---|
| 2520.102–1 | The whole section | ''Reserved'' | All ''plan description'' requirements eliminated from ERISA. |
| 2520.102–4 | The last sentence | Nothing | SPD filing requirement eliminated. |
| 2520.104–4(a) | Last sentence | Nothing | SPD filing requirement eliminated. |
| 2520.104–20(a) (introductory text) | ''any of the followind documents: Plan description, copy of summary plan description, description of material modification in the terms of a plan or change in the information required to be included in the plan description,''. | Nothing | All ''plan description'' requirements eliminated from ERISA, SPD filing requirement eliminated, and SMM filing requirement eliminated. |
| 2520.104–20(a)(2) | ''plan description,'' | Nothing | All ''plan description'' requirements eliminated from ERISA. |
| 2520.104–20(a)(3) | ''plan description and'' | Nothing | All ''plan description'' requirements eliminated from ERISA. |
| 2520.104–20(c) | ''(section 104(a)(1))'' | ''(section 104(a)(6))'' | Requirement to furnish documents to the Department upon request moved to section 104(a)(6). |

[3] Section 2520.104–21(d)(3) was previously amended to eliminate references to requirements to file plan descriptions, SPDs, and SMMs as part of a final rule adopting amendments to ERISA's annual reporting regulations. *See* 65 FR 21068, 21084 (April 19, 2000).

[4] The proposal included conforming amendments to sections 2520.103–1(a), 2520.103–5(a), 2520.103–5(c)(1)(i), 2520.103–5(c)(1)(iii), 2520.103–5(c)(2)(ii), 2520.103–5(c)(2)(iii), 2520.103–5(c)(3), 2520.103–12(a), and 2520.104–41(b) to reflect a cross-reference correction by replacing ''section 104(a)(1)(A)'' with ''section 104(a)(1).'' These changes were adopted as final as part of an April 12, 2000 final rulemaking relating to the annual reporting and disclosure requirements under part 1 of Title I of ERISA. *See* 65 FR 21068 (April 19, 2000). Accordingly, these changes are not included in this rule.

QUICK REFERENCE CHART—Continued

| CFR section(s) | Remove | Add | Reason(s) |
|---|---|---|---|
| 2520.104–21(a) (introductory text) | ''with the Secretary any of the following documents: Plan description, copy of summary plan description, description of material modification in the terms of a plan or change in the information required to be included in the plan description, and terminal report. In addition, the administrator of a plan exempted under this section:''. | After the word file, add: ''with the Secretary a terminal report or furnish upon written request of any participant or beneficiary a copy of any terminal report as required by section 104(b)(4) of the Act.''. | All ''plan description'' requirements eliminated from ERISA, SPD filing requirement eliminated, and SMM filing requirement eliminated. |
| 2520.104–21(a)(1) | All of (a)(1) | Nothing | All ''plan description'' requirements eliminated from ERISA. |
| 2520.104–21(a)(2) | All of (a)(2) | Nothing | All ''plan description'' requirements eliminated from ERISA. |
| 2520.104–21(c) (2nd parenthetical) | ''section 104(a)(1)(A)'' | ''section 104(a)(1)'' | Cross-reference correction. |
| 2520.104–21(c) (3rd parenthetical) | ''section 104(a)(1)'' | ''section 104(a)(6)'' | Requirement to furnish documents to the Department upon request moved to section 104(a)(6). |
| 2520.104–23(b)(2) | ''104(a)(1)'' | ''104(a)(6)'' | Requirement to furnish documents to the Department upon request moved to section 104(a)(6). |
| 2520.104–24(b) | ''104(a)(1)'' | ''104(a)(6)'' | Requirement to furnish documents to the Department upon request moved to section 104(a)(6). |
| 2520.104–25 | ''104(a)(1)'' | ''104(a)(6)'' | Requirement to furnish documents to the Department upon request moved to section 104(a)(6). |
| 2520.104–26(a) | All of paragraph (a), (a)(1), (a)(2), and (a)(3). | New paragraph (a), (a)(1), and (a)(2). | Paragraph (a) restructured to reflect the fact that ''plan description'' requirements and the SPD filing requirement were eliminated from ERISA. |
| 2520.104–27(a) | All of paragraph (a), (a)(1), (a)(2), and (a)(3). | New paragraph (a), (a)(1), and (a)(2). | Paragraph (a) restructured to reflect the fact that ''plan description'' requirements and the SPD filing requirement were eliminated from ERISA. |
| 2520.104–43(a) | ''section 104(a)(1)(A)'' | ''section 104(a)(1)'' | Cross-reference correction. |
| 2520.104–44(d) | ''section 104(a)(1)(A)'' | ''section 104(a)(1)'' | Cross-reference correction. |
| 2520.104a–2 | Whole section | ''Reserved'' | All ''plan description'' requirements eliminated from ERISA. |
| 2520.104a–3 | Whole section | ''Reserved'' | SPD filingrequirement eliminated. |
| 2520.104a–4 | Whole section | ''Reserved'' | SMM filing requirement eliminated. |
| 2520.104a–5(a) | ''section 104(a)(1)(A)'' | ''section 104(a)(1)'' | Cross-reference correction. |
| 2520.104a–5(a)(1) | All text in paragraph (a)(1) | ''Reserved'' | Provision obsolete. |
| 2520.104a–7 | Whole section | ''Reserved'' | SMM filing requirement eliminated. |
| 2520.104b–1(b)(3) | ''plan description'' | Nothing | All ''plan description'' requirements eliminated from ERISA. |
| 2520.104b–2(g) | ''to file with the Secretary or'' | Nothing | SPD filing requirement eliminated. |
| 2520.104b–3(f) | All of paragraph (f) | Nothing | Part of paragraph (f) superseded by TRA '97 and the rest of the paragraph made obsolete by this rule's removal of § 2520.104a–3. |
| 2520.104b–3(g) | All of paragraph (9g) | Nothing | Paragraph (g) superseded by TRA '97 by this rule's removal of § 2520.104a–3. |
| 2560.502c–2(a) | ''section 101(b)(4)'' | ''section 101(b)(1)'' | Cross-reference correction. |

**Executive Order 12866 Statement**

Under Executive Order 12866, the Department must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory

action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is not significant within the meaning of the Executive Order.

**Paperwork Reduction Act**

The rule being issued here is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain an ''information collection request'' as defined in 44 U.S.C. 3502(3).

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each Federal agency to prepare a final regulatory flexibility analysis when promulgating a final rule unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions. Because this rule would remove certain provisions of the CFR and make a number of technical amendments to the CFR designed to correct cross-references affected by amendments to ERISA enacted as part of TRA '97, the rule has no impact, independent of the statutory change eliminating the SPD and SMM filing requirements, on small plans. As a result, the undersigned certifies that this final rule does not have a significant impact on a substantial number of small entities. The factual basis for this certification is the same regardless of whether one uses the definition of small entity found in regulations issued by the Small Business Administration (13 CFR 121.201) or one defines small entity, on the basis of section 104(a)(2) of ERISA, as an employee benefit plan with fewer than 100 participants.

**Small Business Regulatory Enforcement Fairness Act**

The rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review. The rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Unfunded Mandates Reform Act**

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and will not impose an annual burden of $100 million or more on the private sector.

**Federalism Statement**

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. Further, this final rule implements certain revisions to annual reporting and disclosure regulations which have been in effect in similar form for many years. The elimination of superseded regulations from the CFR and correction of cross-references ensure consistency between regulations and statutory requirements, and do not alter the fundamental requirements of the statute with respect to the reporting and disclosure requirements for employee benefit plans, and as such has no implications for the States or the relationship or distribution of power between the national government and the States.

**Statutory Authority**

This final rule is promulgated pursuant to the authority contained in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894, 29 U.S.C. 1135) and sections 101(b) and 104(a)(1) of ERISA, as amended, and under the Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

**List of Subjects**

*29 CFR Part 2520*

Employee benefit plans, Group health plans, Pension plans, Welfare benefit plans.

*29 CFR Part 2560*

Claims, Employee benefit plans, Law enforcement, Pensions.

For the reasons set forth above, parts 2520 and 2560 of Chapter XXV of Title 29 of the Code of Federal Regulations are amended as follows:

## PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1.The authority citation for part 2520 continues to read as follows:

**Authority:** Secs. 101, 102, 103, 104, 105, 109, 110, 111 (b)(2), 111(c), and 505, Pub. L. 93–406, 88 Stat. 840–52 and 894 (29 U.S.C. 1021–1025, 1029–31, and 1135); Secretary of Labor's Order No. 27–74, 13–76, 1–87, and Labor Management Services Administration Order 2–6.

Sections 2520.102–3, 2520.104b–1 and 2520.104b–3 also are issued under sec. 101(a), (c) and (g)(4) of Pub. L. 104–191, 110 Stat. 1936, 1939, 1951 and 1955 and, sec. 603 of Pub. L. 104–204, 110 Stat. 2935 (29 U.S.C. 1185 and 1191c).

### § 2520.102–1 [Removed]

2. Section 2520.102–1 is removed and reserved.

3. Revise § 2520.102–4 to read as follows:

### § 2520.102–4 Option for different summary plan descriptions.

In some cases an employee benefit plan may provide different benefits for various classes of participants and beneficiaries. For example, a plan amendment altering benefits may apply to only those participants who are employees of an employer when the

amendment is adopted and to employees who later become participants, but not to participants who no longer are employees when the amendment is adopted. (See § 2520.104b–4). Similarly, a plan may provide for different benefits for participants employed at different plants of the employer, or for different classes of participants in the same plant. In such cases the plan administrator may fulfill the requirement to furnish a summary plan description to participants covered under the plan and beneficiaries receiving benefits under the plan by furnishing to each member of each class of participants and beneficiaries a copy of a summary plan description appropriate to that class. Each summary plan description so prepared shall follow the style and format prescribed in § 2520.102–2, and shall contain all information which is required to be contained in the summary plan description under § 2520.102–3. It may omit information which is not applicable to the class of participants or beneficiaries to which it is furnished. It should also clearly identify on the first page of the text the class of participants and beneficiaries for which it has been prepared and the plan's coverage of other classes. If the classes which the employee benefit plan covers are too numerous to be listed adequately on the first page of the text of the summary plan description, they may be listed elsewhere in the text so long as the first page of the text contains a reference to the page or pages in the text which contain this information.

4. Revise paragraph (a) of § 2520.104–4 to read as follows:

**§ 2520.104–4 Alternative method of compliance for certain successor pension plans.**

(a) *General.* Under the authority of section 110 of the Act, this section sets forth an alternative method of compliance for certain successor pension plans in which some participants and beneficiaries not only have their rights set out in the plan, but also retain eligibility for certain benefits under the terms of a former plan which has been merged into the successor. This section is applicable only to plan mergers which occur after the issuance by the successor plan of the initial summary plan description under the Act. Under the alternative method, the plan administrator of the successor plan is not required to describe relevant provisions of merged plans in summary plan descriptions of the successor plan furnished after the merger to that class of participants and beneficiaries still affected by the terms of the merged plans.

* * * * *

5. Revise the introductory text in paragraph (a) and paragraphs (a)(2), (a)(3), and (c) of § 2520.104–20 to read as follows:

**§ 2520.104–20 Limited exemption for certain small welfare plans.**

(a) *Scope.* Under the authority of section 104(a)(3) of the Act, the administrator of any employee welfare benefit plan which covers fewer than 100 participants at the beginning of the plan year and which meets the requirements of paragraph (b) of this section is exempted from certain reporting and disclosure provisions of the Act. Specifically, the administrator of such plan is not required to file with the Secretary an annual or terminal report. In addition, the administrator of a plan exempted under this section—

* * * * *

(2) Is not required to furnish upon written request of any participant or beneficiary a copy of the annual report and any terminal report, as required by section 104(b)(4) of the Act;

(3) Is not required to make copies of the annual report available for examination by any participant or beneficiary in the principal office of the administrator and such other places as may be necessary, as required by section 104(b)(2) of the Act.

* * * * *

(c) *Limitations.* This exemption does not exempt the administrator of an employee benefit plan from any other requirement of title I of the Act, including the provisions which require that plan administrators furnish copies of the summary plan description to participants and beneficiaries (section 104(b)(1)) and furnish certain documents to the Secretary of Labor upon request (section 104(a)(6)), and which authorize the Secretary of Labor to collect information and data from employee benefit plans for research and analysis (section 513).

* * * * *

6. Amend § 2520.104–21 by revising paragraphs (a) and (c) to read as follows:

**§ 2520.104–21 Limited exemption for certain group insurance arrangements.**

(a) *Scope.* Under the authority of section 104(a)(3) of the Act, the administrator of any employee welfare benefit plan which covers fewer than 100 participants at the beginning of the plan year and which meets the requirements of paragraph (b) of this section is exempted from certain reporting and disclosure provisions of the Act. Specifically, the administrator of such plan is not required to file with the Secretary a terminal report or furnish upon written request of any participant or beneficiary a copy of any terminal report as required by section 104(b)(4) of the Act.

* * * * *

(c) *Limitations.* This exemption does not exempt the administrator of an employee benefit plan from any other requirement of title I of the Act, including the provisions which require that plan administrators furnish copies of the summary plan description to participants and beneficiaries (section 104(b)(1)), file an annual report with the Secretary of Labor (section 104(a)(1)) and furnish certain documents to the Secretary of Labor upon request (section 104(a)(6)), and authorize the Secretary of Labor to collect information and data from employee benefit plans for research and analysis (section 513).

* * * * *

**§ 2520.104–23 [Amended]**

7. Section 2520.104–23 is amended by removing from paragraph (b)(2) the term ''104(a)(1)'' and adding, in its place, the term ''104(a)(6)''.

**§ 2520.104–24 [Amended]**

8. Section 2520.104–24 is amended by removing from paragraph (b) the term ''104(a)(1)'' and adding, in its place, the term ''104(a)(6)''.

**§ 2520.104–25 [Amended]**

9. Section 2520.104–25 is amended by removing the term ''104(a)(1)'' and adding, in its place, the term ''104(a)(6)''.

10. In § 2520.104–26, revise paragraph (a) to read as follows:

**§ 2520.104–26 Limited exemption for certain unfunded dues financed welfare plans maintained by employee organizations.**

(a) *Scope.* Under the authority of section 104(a)(3) of the Act, a welfare benefit plan that meets the requirements of paragraph (b) of this section is exempted from the provisions of the Act that require filing with the Secretary an annual report and furnishing a summary annual report to participants and beneficiaries. Such plans may use a simplified method of reporting and disclosure to comply with the requirement to furnish a summary plan description to participants and beneficiaries, as follows:

(1) In lieu of filing an annual report with the Secretary or distributing a summary annual report, a filing is made of Report Form LM–2 or LM–3, pursuant to the Labor-Management

Reporting and Disclosure Act (LMRDA) and regulations thereunder, and

(2) In lieu of a summary plan description, the employee organization constitution or by-laws may be furnished in accordance with § 2520.104b–2 to participants and beneficiaries together with any supplement to such document necessary to meet the requirements of §§ 2520.102–2 and 2520.102–3.

* * * * *

11. In § 2520.104–27, revise paragraph (a) to read as follows:

**§ 2520.104–27 Alternative method of compliance for certain unfunded dues financed pension plans maintained by employee organizations.**

(a) *Scope.* Under the authority of section 110 of the Act, a pension benefit plan that meets the requirements of paragraph (b) of this section is exempted from the provisions of the Act that require filing with the Secretary an annual report and furnishing a summary annual report to participants and beneficiaries receiving benefits. Such plans may use a simplified method of reporting and disclosure to comply with the requirement to furnish a summary plan description to participants and beneficiaries receiving benefits, as follows:

(1) In lieu of filing an annual report with the Secretary or distributing a summary annual report, a filing is made of Report Form LM–2 or LM–3, pursuant to the Labor-Management Reporting and Disclosure Act (LMRDA) and regulations thereunder, and

(2) In lieu of a summary plan description, the employee organization constitution or bylaws may be furnished in accordance with § 2520.104b–2 to participants and beneficiaries together with any supplement to such document necessary to meet the requirements of §§ 2520.102–2 and 2520.102–3.

* * * * *

**§ 2520.104–43 [Amended]**

12. Section 2520.104–43 is amended by removing from paragraph (a) the term ''section 104(a)(1)(A)'' and adding, in its place, ''section 104(a)(1)''.

**§ 2520.104–44 [Amended]**

13. Section 2520.104–44 is amended by removing from paragraph (d) the term ''section 104(a)(1)(A)'' and adding, in its place, ''section 104(a)(1)''.

**§ 2520.104a–2 [Removed]**

14. Section 2520.104a–2 is removed and reserved.

**§ 2520.104a–3 [Removed]**

15. Section 2520.104a–3 is removed and reserved.

**§ 2520.104a–4 [Removed]**

16. Section 2520.104a–4 is removed and reserved.

**§ 2520.104a–5 [Amended]**

17–18. Section 2520.104a–5 is amended by removing from paragraph (a) the term ''section 104(a)(1)(A)'' and adding, in its place, the term ''section 104(a)(1)''; and by removing and reserving paragraph (a)(1).

**§ 2520.104a–7 [Removed]**

19. Section 2520.104a–7 is removed and reserved.

**§ 2520.104b–1 [Amended]**

20. Section 2520.104b–1 is amended by removing from the third sentence of paragraph (b)(3) the term ''plan description''.

21. In § 2520.104b–2, revise paragraph (g)(1) to read as follows:

**§ 2520.104b–2 Summary plan description.**

* * * * *

(g) *Terminated plans.* (1) If, on or before the date by which a plan is required to furnish a summary plan description or updated summary plan description to participants and pension plan beneficiaries under this section, the plan has terminated within the meaning of paragraph (g)(2) of this section, the administrator of such plan is not required to furnish to participants covered under the plan or to beneficiaries receiving benefits under the plan a summary plan description.

* * * * *

**§ 2520.104b–3 [Amended]**

22. Section 2520.104b–3 paragraphs (f) and (g) are removed and reserved.

## PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

23. The authority citation for part 2560 continues to read as follows:

**Authority:** Secs. 502, 505 of ERISA, 29 U.S.C. 1132, 1135, and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

Section 2560.502–1 also issued under sec. 502(b)(2), 29 U.S.C. 1132(b)(2).

Section 2560.502i–1 also issued under sec. 502(i), 29 U.S.C. 1132(i).

Section 2560.503–1 also issued under sec. 503, 29 U.S.C. 1133.

**§ 2560.502c–2 [Amended]**

24. Section 2560.502c–2 is amended by removing from paragraph (a)(1) and (a)(2) the term ''section 101(b)(4)'' each time it appears and adding, in its place, the term ''section 101(b)(1)''.

Signed at Washington, DC, this 22nd day of December, 2001.

**Ann L. Combs,**

*Assistant Secretary, Pension and Welfare, Benefits Administration, U.S. Department of Labor.*

[FR Doc. 02–140 Filed 1–4–02; 8:45 am]

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### 29 CFR Parts 2520, 2560 and 2570

**RIN 1210–AA67, RIN 1210–AA68**

## Furnishing Documents to the Secretary of Labor on Request Under ERISA Section 104(a)(6) and Assessment of Civil Penalties Under ERISA Section 502(c)(6)

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** This document contains a final rulemaking under the Employee Retirement Income Security Act of 1974 (ERISA) that implements certain amendments to ERISA added as part of the Taxpayer Relief Act of 1997 (TRA '97). The final rule implements section 104(a)(6) of ERISA by requiring the administrator of an employee benefit plan subject to Part 1 of Title I of ERISA to furnish to the Department, upon request, certain documents relating to the employee benefit plan. The final rule also establishes procedures relating to the assessment of civil penalties for failures or refusals by administrators to furnish requested documents to the Department and establishes procedures for review of such penalties by the Department. The final rule affects employee pension and welfare benefit plans, plan sponsors, administrators and fiduciaries, and plan participants and beneficiaries.

**DATES:** This regulation is effective March 8, 2002.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Fields, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 693–8500 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### A. Background

The Taxpayer Relief Act of 1997 (TRA '97) eliminated the requirement under ERISA that employee benefit plan administrators automatically file

summary plan descriptions (SPDs) and summaries of material plan modifications (SMMs) with the Department. TRA '97 added paragraph (6) to section 104(a) of ERISA which provides that the administrator of any employee benefit plan subject to part 1 of Title I of ERISA is required to furnish to the Department, on request, any documents relating to the employee benefit plan, including but not limited to, the latest SPD (including any summaries of plan changes not contained in the SPD), and the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.[1] TRA '97 also added section 502(c)(6) of ERISA providing the Secretary with the authority to assess civil penalties for a plan administrator's failure to furnish material requested under section 104(a)(6) of ERISA. Specifically, section 502(c)(6) provides that, if within 30 days of a request by the Department, the plan administrator fails to furnish materials requested by the Department, the Department may assess a civil penalty against the administrator of up to $100 a day from the date of such failure, but in no event in excess of $1,000 per request. Section 502(c)(6) also provides that no penalty shall be imposed for failures resulting from matters reasonably beyond the control of the plan administrator.

On August 5, 1999, the Department published a notice in the **Federal Register** (64 FR 42797) inviting public comment on a proposal to add regulations at 29 CFR 2520.104a–8 and 29 CFR 2560.502c–6 that would implement the above TRA '97 amendments. In response to this notice, the Department received four public comment letters. Set forth below is a description of the regulations, and a discussion of public comments received and specific changes from the proposal reflected in the final rule.

**B. Description of Regulations, Comments and Changes**

*Furnishing Documents to the Department on Request Under Section 104(a)(6)*

Section 2520.104a–8 implements section 104(a)(6) of ERISA. As proposed, paragraph (a)(1) of § 2520.104a–8 provides that the administrator (within the meaning of section 3(16)(A) of ERISA) of any employee benefit plan subject to Part 1 of Title I of ERISA has an obligation to furnish to the Department, upon request, any document relating to the plan. Paragraph (a)(2) clarifies that multiple requests under ERISA section 104(a)(6) and § 2520.104a–8 for the same or similar document or documents shall be considered separate requests for purposes of penalties under ERISA section 502(c)(6) and § 2560.502c–6(a). Paragraph (b) of the proposal incorporates the service of notice rules in § 2560.502c–6(i), for purposes of serving the plan administrator with a request under ERISA section 104(a)(6); and paragraph (c) of the proposed regulation describes when a document would be deemed to be received by the Secretary.

Most of the commenters focused on two general issues—what documents will be requested by the Department and on whose behalf the Department will request documents. With regard to the first issue, the commenters expressed concern that the regulation, as proposed, would permit the Department to request, on behalf of participants and beneficiaries, any document relating to the plan, including proprietary, confidential and other plan-related information with respect to which participants and beneficiaries generally would not have access. Commenters argued that the Department should limit its authority to requesting only those documents that a participant or beneficiary is otherwise entitled under section 104(b)(4) of ERISA.[2] The second issue related to commenter concerns that plan-related information would be provided to persons who were not plan participants or beneficiaries. In this regard, the commenters suggested that the final regulation should make clear that the Department will only request documents on behalf of participants and beneficiaries and should include a process that the Department will follow in determining whether a given individual is entitled to obtain documents.

In the preamble to the proposed regulation, the Department indicated that, while section 104(a)(6) conferred broad authority on the Secretary to request documents, the Department generally intended to limit the exercise of its authority under § 2520.104a–8 to requesting SPDs on behalf of participants and beneficiaries. The Department also envisioned that it may intervene to assist a participant and beneficiary in obtaining documents or instruments pursuant to which a plan is established or operated where a plan administrator fails or refuses to respond to the request of a participant or beneficiary.

In response to the concerns of the commenters, the Department has modified the final regulation to more specifically comport with the Department's views expressed in the preamble to the proposed regulation. In this regard, the final regulation specifically limits the application of § 2520.104a–8 to requests from the Department for the latest updated summary plan description (including any summaries of material modifications to the plan or changes in the information required to be included in the summary plan description)[3] and any other documents described in section 104(b)(4) of ERISA with respect to which a participant or beneficiary has requested, in writing, a copy from the plan administrator and which the administrator has failed or refused to furnish to the participant or beneficiary. *See* § 2520.104a–8(a)(1)(i) and (ii).

As revised, the final regulation clearly limits the documents to be requested from plan administrators by the Department on behalf of participants and beneficiaries to those documents with respect to which participants and beneficiaries have a statutory right to examine and obtain copies.[4]

Also, by limiting the circumstances under which the Department will request documents and instruments pursuant to which a plan is established or operated to those where a participant or beneficiary has previously made a written request to the plan for such documents or instruments, plan administrators are afforded the opportunity to raise, with both the requesting individual and the Department, issues concerning the status of the requesting individual as a participant or beneficiary.

[1] Prior to TRA '97, this authority was in section 104(a)(1) of ERISA, which stated that ''the administrator shall also furnish to the Secretary, upon request, any documents relating to the employee benefit plan, including but not limited to the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.''

[2] Under section 104(b)(4) of ERISA, the administrator must, upon written request of any participant or beneficiary, ''furnish a copy of the latest updated summary plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated.''

[3] For purposes of a request by the Department under ERISA section 104(a)(6), any separate documents required to be furnished with the SPD, e.g., a plan's claims procedures provided as a separate document under 29 CFR § 2520.102–3(s), would be considered part of the plan's latest updated summary plan description.

[4] *See* sections 104(b)(2) and 104(b)(4) of ERISA. Also, the Department notes that the final rule relates solely to requests by the Department for documents pursuant to section 104(a)(6) and, accordingly, does not serve to limit or otherwise affect the authority of the Department to request documents pursuant to other provisions of ERISA, including the Department's authority under section 504.

The final regulation does not condition requests for updated summary plan descriptions on a participant or beneficiary first seeking the document directly from the plan. As explained in the preamble to the proposed regulation, the Department believes that the elimination of the SPD filing requirements, taken together with the establishment of civil penalties for failures to furnish requested documents, clearly evidences Congress' intent that the Department would exercise its authority to ensure that participants and beneficiaries would have an independent source for SPDs. The value of such access is predicated on the rights of participants and beneficiaries to choose not to go to the plan or plan sponsor for such information.

In addition to the foregoing, the final rule has been modified to clarify the persons who will be considered participants or beneficiaries for purposes of requests pursuant to section 104(a)(6) and the regulation. A new paragraph (b) was added to the final regulation,[5] provides that a participant or beneficiary will include any individual who is: (i) A participant or beneficiary within the meaning of ERISA sections 3(7) and 3(8), respectively; (ii) an alternate payee under a qualified domestic relations order (see ERISA section 206(d)(3)(K)) or prospective alternate payee (spouses, former spouses, children or other dependents); (iii) a qualified beneficiary under COBRA (see ERISA section 607(3)) or prospective qualified beneficiary (spouse or dependent child); (iv) an alternate recipient under a qualified medical child support order (see ERISA section 609(a)(2)(C)) or a prospective alternate recipient; or (v) a representative of any of the foregoing. In the preamble to the proposed regulation, the Department expressed the view that such persons would be treated as participants and beneficiaries for purposes of the regulation. Upon further consideration, and taking into account there were no public comments objecting to the Department's position on this issue, the Department has determined that, in the interest of clarity, the persons to be treated as participants and beneficiaries for purposes of the regulation should be codified in the regulation.

In addition to the comments discussed above, one commenter suggested that plans should be required to include a notice in their SPDs informing participants and beneficiaries that they can ask the Department for help in obtaining documents from their plan administrator. The Department, as part of a separate rule amending its regulations governing the content of SPDs, made improvements to the ''ERISA statement of rights'' currently required to be included in each SPD pursuant to 29 CFR 2520.102–3(t) to ensure that participants and beneficiaries understand their right to request certain documents from their plan and the availability of assistance from the Department. *See* 65 FR 70226, 70243 (November 21, 2000).

One commenter argued that inasmuch as the plan may charge participants and beneficiaries for copies of documents available under section 104(b)(4) of ERISA, plans should be able to charge the Department for materials furnished in response to requests by the Department on behalf of participants and beneficiaries. The Department notes that there is no statutory basis for permitting the imposition of charges on the Department attendant to costs incurred in connection with requests under section 104(a)(6) of ERISA. Further, in view of the fact that SPDs have been available to participants through the Department's public disclosure room and that Congress, in enacting the TRA '97 changes, intended to ensure that participants have continued access to SPDs through the Department, the Department does not believe passing such charges back to participants would be consistent with Congressional intent. With respect to other documents described in section 104(b)(4) of ERISA, the Department's involvement in requesting such documents will result from the failure or refusal of a plan administrator to furnish the requested documents under circumstances where a reasonable charge could have been imposed for copies. For these reasons, the Department has not modified the regulation in response to the foregoing comments.

One commenter noted that the proposed regulation did not indicate whether the Department will retain copies of documents submitted in response to requests on behalf of participants and beneficiaries, nor did it indicate whether the Department will discard documents that were filed with the Department prior to the enactment of the TRA '97 amendments. The Department does not intend to retain copies of materials furnished in response to requests under ERISA section 104(a)(6) made on behalf of participants and beneficiaries or other persons. In the case of previously filed SPDs and SMMs, the Department is maintaining the SPDs and SMMs filed prior to the TRA '97 amendments. These documents are currently available for examination and copying through PWBA's public disclosure room.

One commenter expressed the view that proposed § 2520.104a–8(c), which provides that ''a document is not considered furnished to the Secretary until the date on which such document is received by the Department of Labor at the address specified in the request,'' should be modified to provide that documents mailed by certified mail will be considered received when mailed. The Department agrees that such a change is appropriate and would establish consistency with the rules governing ''service,'' as set forth in § 2560.502c–6(i), applicable to the assessment of civil penalties for a failure to comply with a request for documents from the Department. Accordingly, paragraph (d) of the final regulation (which was paragraph (c) of the proposal) has been amended to provide that, in the case of documents furnished to the Secretary by certified mail, the document shall be considered received on the date on which the document is mailed to the Department of Labor at the address specified in the request.

One commenter noted that the proposed regulation did not take into account that many multiemployer plans may not always be able to comply with the Department's requests for documents within 30 days. Due to the often decentralized administrative structure of multiemployer plans, necessitated by the large number of participants and contributing employers, the commenter noted that a multiemployer plan's designated plan administrator might not have possession or control of certain documents that the Department may request and such plan administrator may have to locate the person with control of the requested documents and then request copies of the documents from an unaffiliated third party over whom the plan administrator may not be able to exercise any authority. The commenter suggested that the final regulation include a procedure for plans to obtain an extension of time to respond to the Department's request for documents if good cause for the extension is demonstrated, without the imposition of the penalty prescribed in section 502(c)(6) of ERISA or the need for a penalty appeal. In addition, the commenter noted that, in the event multiple requests for documents are received from the Department one after another, the volume of requests may prevent a plan administrator from filing a response within 30 days, and the

[5] Paragraphs (b) and (c) of the proposal have been redesignated as paragraphs (c) and (d) of the final regulation.

commenter recommended that the final regulation should provide that the Department will waive any fines that may otherwise be assessed under section 502(c)(6) of ERISA if the plan administrator demonstrates to the satisfaction of the Department that a timely response was not practicable. Two commenters suggested that a plan administrator should be allowed to initially decline production of documents and challenge the propriety of requests if the plan administrator believes that such documents do not relate to the plan or that they contain information of a confidential or proprietary nature and that a sanction should be stayed pending review of the claim and production of the documents following a decision adverse to the plan administrator. One of these commenters noted that the proposed regulation would subject plan administrators challenging the Department's requests to substantial fines that may only be reduced or waived by engagement in an adjudicatory process with the Department. This commenter noted that such adjudicatory proceedings to appeal the assessment of the Department's fines would result in expenditures of valuable resources that would be better used for providing benefits to plan participants.

The Department believes that most of the concerns raised by these commenters are adequately addressed by the changes to the final rule that clarify the limited range of documents the Department will request under section 104(a)(6). Moreover, the Department believes that the provisions of § 2520.104a–8 and § 2560.502c–6 provide the Department with sufficient flexibility, prior to the assessment of a civil penalty, to take into account matters reasonably beyond the control of a plan administrator that would affect an administrator's ability to comply with a request from the Department in a timely manner. Furthermore, the Department believes that the processes provided in the regulations are sufficiently flexible to enable plan administrators to raise concerns with the Department regarding the production or disclosure of requested documents. In particular, the Department notes that there is nothing in § 2520.104a–8 that would limit the Department's ability to consider, following the issuance of a request for documents, information provided by a plan administrator concerning the administrator's inability to comply with the request in a timely fashion or an administrator's concerns relating to the disclosure of the requested information. In addition, an administrator may, pursuant to § 2560.502c–6(e), submit a statement setting forth why matters reasonably beyond the control of the administrator precluded timely compliance with the Department's request for documents.

*Authority To Assess Civil Penalties for Violations of Section 104(a)(6) of ERISA*

Section 2560.502c–6(a) addresses the general application of section 502(c)(6) of ERISA. Paragraph (a)(1) provides that the administrator, as defined in ERISA section 3(16)(A), of an employee benefit plan is liable for the civil penalties assessed under section 502(c)(6) in each case in which there is a failure or refusal to furnish to the Department any document requested under section 104(a)(6) of ERISA and § 2520.104a–8. Paragraph (a)(2) defines such a failure or refusal as a failure or refusal, in whole or in part, to furnish documents at the time and in the manner prescribed in the request.

Section 2560.502c–6(b) sets forth the amount of penalties that may be assessed under section 502(c)(6) of ERISA. Consistent with the terms of section 502(c)(6) of ERISA, paragraph (b)(1) provides that the Department may assess a penalty of up to $100 per day, but not in excess of $1,000 per request. Paragraph (b)(2) provides that the date of a failure or refusal to furnish any documents requested under section 104(a)(6) of ERISA and § 2520.104a–8 shall not be earlier than the thirtieth day after service of the request.

Section 2560.502c–6(c) provides that, prior to the assessment of any penalty under section 502(c)(6) of ERISA, the Department shall provide the administrator with written notice indicating the Department's intent to assess a penalty, the amount of the penalty, the period to which the penalty applies, and the reason(s) for the penalty. The notice is to be served in accordance with § 2560.502c–6(i) (service of notice provision). Under § 2560.502c–6(f), the notice would become a final order of the Department, within the meaning of § 2570.111(g) (also published as part of this rulemaking), within 30 days of the service of the notice, unless a statement described in § 2560.502c–6(e) is filed with the Department.

Paragraphs (d), (e), (f), (g), and (h) of section 2560.502c–6 generally relate to the waiver of penalties under section 502(c)(6) of ERISA. Paragraph (d) provides that the Department may waive all or part of the penalty to be assessed under section 502(c)(6) upon a showing by the administrator, under paragraph (e), that the failure or refusal to comply with a request under ERISA section 104(a)(6) and § 2520.104a–8 was due to matters reasonably beyond the control of the plan administrator. Under paragraph (e), the administrator has 30 days from receipt of the notice required under § 2560.502c–6(c) within which to make such a showing or offer other reasons why the penalty, as calculated, should not be assessed.[6]

Paragraph (f) provides that a failure to file a timely statement under paragraph (e) will constitute a waiver of the right to appear and contest the facts alleged in the notice (§ 2560.502c–6(c)) for purposes of any adjudicatory proceeding involving the assessment of a penalty under section 502(c)(6) of ERISA.

Paragraph (g)(1) provides that, following a review of the facts alleged in the statement under paragraph (e), the Department shall notify the administrator of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty. Under paragraph (g)(2), this notice becomes a final order 30 days after the date of service of the notice, except as provided in paragraph (h). Paragraph (h) provides that the notice described in paragraph (g) will become the final order of the Department unless, within 30 days of the date of service of the notice, the administrator or representative files a request for a hearing under § 2570.110 *et seq.* (published as part of this rulemaking) and files an answer, in writing, opposing the proposed sanction.

Section 2560.502c–6(i) describes the rules relating to service of the (1) Department's notice of intent to assess a penalty (§ 2560.502c–6(c)), and (2) Department's notice of determination on the statement of matters reasonably beyond the control of the plan administrator (§ 2560.502c–6(g)).[7] Paragraph (i) provides that service shall be made in one of three ways: (1) by delivering a copy at the principal office, place of business, or residence of the administrator or representative thereof; (2) by leaving a copy at the principal office, place of business, or residence of

[6] In the event another fiduciary of the plan has custody of or control over a document requested under ERISA section 104(a)(6) and § 2520.104a–8, or if the administrator engages a third party to perform services for the plan and, pursuant to the engagement, the third party has custody of or control over such a document, the administrator's lack of custody would not be considered by the Department to be a matter reasonably beyond the administrator's control.

[7] As noted above, under § 2520.104a–8(c) these service rules would also apply to the Department's initial request for documents under ERISA section 104(a)(6) and § 2520.104a–8.

the administrator or representative thereof; or (3) by mailing a copy to the last known address of the administrator or representative thereof.

Section 2560.502c–6(j) clarifies the liability of the parties for penalties assessed under section 502(c)(6) of ERISA. Paragraph (1) provides that, if more than one person is responsible as administrator for the failure to furnish document(s) requested by the Department, all such persons shall be jointly and severally liable for such failure. Paragraph (2) provides that any person against whom a penalty is assessed under section 502(c)(6) of ERISA is personally liable for the payment of such penalty. Paragraph (2) also clarifies that liability for the payment of penalties assessed under section 502(c)(6) of ERISA is a personal liability of the person against whom the penalty is assessed and not a liability of the plan.

The Department's Office of Administrative Law Judges (OALJ) commented that, in its experience, various respondents in ERISA proceedings have found that the method for requesting a hearing is confusing. The OALJ suggested that the situation could be improved by changing proposed regulation § 2560.502c–6(h) to read as follows:

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will become the final order of the Department of Labor, unless, within 30 days from the date of the service of the notice, the administrator or representative thereof files a request for a hearing under § 2570.110 *et seq.*, and files an answer to the notice. The request for hearing and answer shall be filed in accordance with § 2570.112. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of § 2560.502c–6.

The OALJ also recommended that proposed § 2570.111(c) be modified to define the term ''Answer'', rather than referencing the definition at § 18.5(d)(1). The term ''Answer'' is defined to mean ''a written statement that is supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to § 2560.502c–6(g).'' The Department has incorporated these recommendations into the final regulation sections 2560.502c–6(h) and 2570.111(c).

With regard to paragraph (i) of § 2560.502c–6, one commenter suggested that service should only be effectuated by the Department's mailing or delivering of the respective documents to the plan administrator's regular place of business, or such other location as the plan may specify in its communication with the Department. With respect to a multiemployer plan that designates its board of trustees as the plan administrator, the commenter noted that service of the Department's request for documents and notice of intent to assess a penalty should be made on the fund office, rather than on the individual trustees, as individual trustees should not be responsible for accepting service unless the trustees are acting in an official capacity. This commenter expressed the view that further clarification is needed with regard to service in the context of multiemployer plans.

The Department does not believe any further clarification of the service requirement is warranted. The proposal states that service of a request for documents or other notices may be served by delivering a copy to the administrator or representative thereof, by leaving a copy at the principal office, place of business or residence of the administrator or representative thereof, or by mailing a copy to the last known address of the administrator or representative thereof. It is the Department's view that application of the service of notice requirement does not need further clarification and, accordingly, the Department is adopting paragraph (i) of § 2560.502c–6 without change.

One commenter stated that the proposed regulation unfairly and unnecessarily requires that any fines assessed under section 502(c)(6) of ERISA be paid by the plan administrator, rather than the plan. The commenter urged the Department to revise the proposed regulation to permit plans to pay any fines that may be assessed under ERISA section 502(c)(6), unless the Department concludes that the plan administrator's failure to furnish the requested documents within the 30-day period was willful.

It is the view of the Department that, in the absence of statutory language to the contrary, liability for payment of civil penalties is a personal liability of the person against whom the penalty is assessed and not the liability of the plan. Accordingly, as noted in the supplementary information accompanying the proposal, the payment of penalties assessed under ERISA section 502(c)(6) from plan assets would not constitute a reasonable expense of administering a plan for purposes of ERISA sections 403 and 404. In contrast, reasonable expenses attendant to compliance with a request from the Department for documents, such as expenses for copying and mailing the requested documents, would constitute reasonable expenses of administering a plan for purposes of ERISA sections 403 and 404.

*Administrative Law Procedures for Assessment of Civil Penalties Under ERISA Section 502(c)(6)*

Except as noted above, § 2570.110, *et seq.*, establishing procedures for hearings before an Administrative Law Judge (ALJ) with respect to assessment by the Department of a civil penalty under ERISA section 502(c)(6) and appealing an ALJ decision to the Secretary or her delegate are being adopted as proposed.

With regard to such procedures, the Secretary has established the Pension and Welfare Benefits Administration (PWBA) within the Department for purposes of carrying out most of the Secretary's responsibilities under ERISA. *See* Secretary's Order 1–87, 52 FR 13139 (April 27, 1987). The Department has already published rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges at 29 CFR part 18 (48 FR 32538 (1983)). As explained in 29 CFR 18.1, those provisions generally govern administrative hearings before ALJs assigned to the Department and are intended to provide maximum uniformity in the conduct of administrative hearings. However, in the event of an inconsistency or conflict between the provisions of 29 CFR part 18 and a rule or procedure required by statute, executive order or regulation, the latter controls.

The Department has reviewed the applicability of the provisions of 29 CFR part 18 to the assessment of civil penalties under ERISA section 502(c)(6) and has decided to adopt many, though not all, of the provisions thereunder for ERISA 502(c)(6) proceedings.

The final rule relates specifically to procedures for assessing civil penalties under section 502(c)(6) of ERISA and is controlling to the extent it is inconsistent with any portion of 29 CFR part 18. The final rule is designed to maintain the rules set forth at 29 CFR part 18 consistent with the need for an expedited procedure, while recognizing the special characteristics of proceedings under ERISA section 502(c)(6). For purposes of clarity, where a particular section of the existing procedural rules would be affected by the final rule, the entire section (with appropriate modifications) has been set out in this document. Thus, only a portion of the provisions of the procedural regulations set forth below involves changes from, or additions to, the rules in 29 CFR part 18. The specific

modifications to the rules in 29 CFR part 18, and their relationship to the conduct of these proceedings generally, are outlined below.

The general applicability of the procedural rules under section 502(c)(6) of ERISA is set forth in § 2570.110. The definition section (§ 2570.111) incorporates the basic adjudicatory principles set forth at 29 CFR part 18, but includes terms and concepts of specific relevance to proceedings under ERISA section 502(c)(6). In particular, § 2570.111 states that the term ''Secretary'' means the Secretary of Labor and includes various individuals to whom the Secretary may delegate authority. The Department contemplates that the duties assigned to the Secretary under the procedural regulation will in fact be discharged by the Assistant Secretary for Pension and Welfare Benefits or his or her delegee.

In general, the burden to initiate adjudicatory proceedings before an ALJ will be on the party (respondent) against whom the Department is seeking to assess a civil penalty under ERISA section 502(c)(6). However, a respondent must comply with the procedures relating to agency review set forth in § 2560.502c–6 before initiating adjudicatory proceedings. Section 2570.111(c) and (d), together with § 2560.502c–6(h), contemplate that a notice issued pursuant to § 2560.502c–6(g) will become the final order of the Department, unless, within 30 days from the date of the service of the notice, the administrator or representative thereof files a request for a hearing under § 2570.110 *et seq.*, and files an answer to the notice.

The service of documents by the parties to an adjudicatory proceeding, as well as by the ALJ, are governed by § 2570.112. Section 2570.114 provides that if the respondent fails to request a hearing by filing an answer to the Department's notice of determination (§ 2560.502c–6(g)) within the 30-day period provided by § 2560.502c–6(h), such failure shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice and shall be deemed to constitute an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(6) of ERISA. Section 2570.114 makes clear that in the event of such failure, the assessment of penalty becomes final.

Section 2570.115 provides that the ALJ's decision shall include the terms and conditions of any consent order or settlement which has been agreed to by the parties. This section also provides that the decision of the ALJ which incorporates such consent order shall become a final agency action within the meaning of 5 U.S.C. 704.

The rules in 29 CFR part 18 concerning the computation of time, pleadings, prehearing conferences and statements, and settlements are adopted in these procedures for adjudications under ERISA section 502(c)(6). The section on the designation of parties (§ 2570.113) differs from its counterpart under § 18.10 of this title in that it specifies that the respondent in these proceedings will, as indicated above, be the party against whom the Department seeks to assess a civil penalty under ERISA section 502(c)(6).

29 CFR 2570.116 states that discovery may be ordered by the ALJ only upon a showing of good cause by the party seeking discovery. This differs from the more liberal standard for discovery contained in 29 CFR 18.14. In cases in which discovery is ordered by the ALJ, the order shall expressly limit the scope and terms of discovery to that for which good cause has been shown. To the extent that the order of the ALJ does not specify rules for the conduct of the discovery permitted by such order, the rules governing the conduct of discovery from 29 CFR part 18 are to be applied in any proceeding under section 502(c)(6) of ERISA. For example, if the order of the ALJ states only that interrogatories on certain subjects may be permitted, the rules under 29 CFR part 18 concerning the service and answering of such interrogatories shall apply. The procedures under 29 CFR part 18 for the submission of facts to the ALJ during the hearing are also to be applied in proceedings under ERISA section 502(c)(6).

The section on summary decisions (§ 2570.117) provides for requisite authorization for an ALJ to issue a summary decision which may become final when there are no genuine issues of material fact in a case arising under ERISA section 502(c)(6). The section concerning the decision of the ALJ (§ 2570.118) differs from its counterpart at § 18.57 of this title in that § 2570.118 states that the decision of the ALJ in an ERISA section 502(c)(6) case shall become the final decision of the Secretary unless a timely appeal is filed.

The procedures for appeals of ALJ decisions under ERISA section 502(c)(6) of ERISA would be governed solely by §§ 2570.119 through 2570.121, and without any reference to the appellate procedures contained in 29 CFR part 18. Section 2570.119 establishes the time limit within which such appeals must be filed, the manner in which the issues for appeal are determined and the procedure for making the entire record before the ALJ available to the Secretary. Section 2570.120 provides that review of the Secretary shall not be on a *de novo* basis, but rather on the basis of the record before the ALJ and without an opportunity for oral argument. Section 2570.121 sets forth the procedure for establishing a briefing schedule for such appeals and states that the decision of the Secretary on such an appeal shall be a final agency action within the meaning of 5 U.S.C. 704. As required by the Administrative Procedure Act (5 U.S.C. 552(a)(2)(A)) all final decisions of the Department under section 502(c)(6) of ERISA shall be compiled in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

**Executive Order 12866 Statement**

Under Executive Order 12866, the Department must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, the Department has determined that this regulatory action is not significant within the meaning of the Executive Order.

The costs of the regulation will be borne by the plan when responding to requests from the Department for copies of the latest SPD and other documents described in section 104(b)(4) of ERISA that a participant or beneficiary has requested, in writing, from the plan administrator and which the administrator has failed or refused to furnish in a timely fashion. The individual cost of each such request is estimated to be minimal because only a participant or beneficiary may make a

request and each administrator of an employee pension or welfare benefit plan covered under Title I of ERISA already is required by section 101(a)(1) to furnish an SPD to each participant covered under the plan and each beneficiary who is receiving benefits under the plan, and to update the SPD on a regular basis in accordance with section 104(b)(1). Moreover, other documents under which the plan is established or operated and that may be requested must be made available to participants and beneficiaries pursuant to section 104(b)(2). Thus, administrators are not expected to incur costs in preparing or obtaining these documents in response to a request from the Department.

The regulation is expected to benefit plan participants and beneficiaries who may have been unable to obtain a current SPD or other document described in ERISA section 104(b)(4), and who might otherwise not have an effective means of obtaining such documents in the absence of the requirement for the plan administrator to file such documents with the Department. The provisions implementing the penalty for failure to furnish such documents on request may serve to ensure timely compliance with such requests.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA '95), the Department submitted the information collection request (ICR) included in this regulation to the Office of Management and Budget (OMB) for review and clearance at the time the Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** (August 5, 1999, 64 FR 42797). OMB approved the ICR under OMB control number 1210–0112. The approval will expire on October 31, 2002. The public is not required to respond to an information collection request unless it displays a currently valid OMB control number.

The estimated burden cost has been adjusted in response to a revision in the terms of the proposal. In this final rule, the Department has adopted a commenter's suggestion that documents delivered by certified mail be considered received on the date the document is mailed instead of the date the document is actually received. Although the use of certified mail is not required, both the comment and the provisions of this final rule suggest that plan administrators do find it reasonable from time to time to use certified mail for important communications. To account for this in burden estimates, the mailing cost assumption has been increased to $4 per request from the $1 used for the proposal's estimate.

*Agency:* Pension and Welfare Benefits Administration, Department of Labor.

*Title:* Furnishing Documents to the Secretary of Labor on Request under ERISA Section 104(a)(6) and Assessment of Civil Penalties Under ERISA Section 502(c)(6).

*OMB Number:* 1210–0112.

*Affected Public:* Individuals or households, Business or other for-profit institutions; Not-for-profit institutions.

*Frequency of Response:* On occasion.

*Total Respondents:* 1,000.

*Total Responses:* 1,000.

*Estimated Burden Hours:* 95.

*Estimated Annual Costs (Operating and Maintenance):* $4,000.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires that the agency present a final regulatory flexibility analysis at the time of the publication of the notice of final rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of analysis under the RFA, PWBA continues to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for simplified annual reporting and disclosure if the statutory requirements of Part 1 of Title I of ERISA would otherwise be inappropriate for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at §§ 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and which satisfy certain other requirements.

Further, while some large employers may have small plans, in general, most small plans are maintained by small employers. Thus, PWBA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (5 U.S.C. 631 *et seq.*). PWBA solicited comments on the use of this standard for evaluating the effects of the proposal on small entities. No comments were received with respect to the standard. Therefore, a summary of the final regulatory flexibility analysis based on the 100 participant size standard is presented below. This final regulation is not expected to have a significant impact on small plans.

This regulation applies to all small employee benefit plans covered by Title I of ERISA. Employee benefit plans with fewer than 100 participants include 655,000 pension plans, 2.6 million health plans, and 3.4 million non-health welfare plans (mainly life and disability insurance plans). Nonetheless, the Department estimates few of these small plans will be affected by the regulation because plans will receive relatively few requests for SPDs and other documents described under section 104(b)(4) that a participant or beneficiary has requested, in writing, from the plan administrator and which the administrator has failed or refused to furnish in a timely fashion. The Department estimates about 1,000 requests for assistance by participants and beneficiaries in obtaining SPDs and other such documents per year, based on the actual rate of requests to the Public Disclosure Room during the last two years, adjusted for requests expected to be made with other offices. The percentage of these requests that pertain to small plans is unknown. However, even if it is assumed that all plans that receive requests for documents pursuant to section 104(a)(6) are small plans, the number affected in any year is very small (i.e., 1,000 of approximately 6.6 million plans).

The Department also believes that the time required to respond to a request under the regulation for an SPD or other document under which a plan was established or operated will be minimal. Responding to a request primarily requires clerical skills, although a professional may read the request and

direct others to respond. The documents to be mailed in response to the request are expected to be readily available, so accumulating and mailing the documents is expected to take about 5 minutes. If it is assumed that a cost is incurred for this time at a rate of $20 per hour and that the maximum mailing cost per request is $4, the total cost per request is estimated at less than $6. This total cost is not expected to constitute a significant impact for any plan. For the purposes of this final RFA analysis, PWBA has increased the assumed labor rate from $11 to $20 to account for inflation, and the estimated mailing cost from $1 to $4, to account for the fact that some plans may make use of certified mail in responding to requests from the Department.

Further, the regulation is intended to assist small plan administrators by providing sufficient information for them to understand the request and the process they may use to offer a reasonable cause for failure to comply if they are unable to do so within the initial deadline, by ensuring that they receive notice before the assessment of a penalty is initiated.

**Small Business Regulatory Enforcement Fairness Act**

The rule is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review. The rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Unfunded Mandates Reform Act**

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, nor does it include mandates which may impose an annual burden of $100 million or more on the private sector.

**Federalism Statement**

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, 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 does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. This final rule implements the requirement that administrators of an employee benefit plan furnish the Department, on request, the latest SPD and any other documents described under section 104(b)(4) that a participant or beneficiary has requested, in writing, from the plan administrator and which the administrator has failed or refused to furnish in a timely fashion. The final rule also establishes procedures relating to the assessments of civil penalties for failure to furnish such requested SPDs and documents and procedures for review of such penalties by the Department. The requirements implemented in this final rule do not alter the fundamental reporting and disclosure requirements or penalty provisions of the statute with respect to employee benefit plans, and as such have no implications for the States or the relationship or distribution of power between the national government and the States.

**Statutory Authority**

These final regulations set forth herein are issued pursuant to the authority contained in sections 505, 104(a), and 502(c)(6) of ERISA (Pub. L. 93–406, 88 Stat. 894, 29 U.S.C. 1024, 1132, and 1135).

**List of Subjects**

*29 CFR Part 2520*

Accountants, Disclosure requirements, Employee benefit plans, Pension plans, and Reporting and recordkeeping requirements.

*29 CFR Part 2560*

Claims, Employee benefit plans, Law enforcement, Pensions.

*29 CFR Part 2570*

Administrative practice and procedure, Employee benefit plans, Party in interest, Law enforcement, Pensions, Prohibited transactions.

In view of the foregoing, Parts 2520, 2560, and 2570 of Chapter XXV of title 29 of the Code of Federal Regulations are amended as follows:

## PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for part 2520 continues to read as follows:

**Authority:** Secs. 101, 102, 103, 104, 105, 109, 110, 111 (b)(2), 111 (c), and 505, Pub. L. 93–406, 88 Stat. 840–52 and 894 (29 U.S.C. 1021–1025, 1029–31, and 1135); Secretary of Labor's Order No. 27–74, 13–76, 1–87, and Labor Management Services Administration Order 2–6.

Sections 2520.102–3, 2520.104b–1, and 2520.104b–3 also are issued under sec. 101(a), (c), and (g)(4) of Pub. L. 104–191, 110 Stat. 1936, 1939, 1951 and 1955 and, sec. 603 of Pub. L. 104–204, 110 Stat. 2935 (29 U.S.C. 1185 and 1191c).

2. Add § 2520.104a–8 to read as follows:

**§ 2520.104a–8 Requirement to furnish documents to the Secretary of Labor on request.**

(a) *In general.* (1) Under section 104(a)(6) of the Act, the administrator of an employee benefit plan subject to the provisions of part 1 of title I of the Act is required to furnish to the Secretary, upon request, any documents relating to the employee benefit plan. For purposes of section 104(a)(6) of the Act, the administrator of an employee benefit plan shall furnish to the Secretary, upon service of a written request, a copy of:

(i) The latest updated summary plan description (including any summaries of material modifications to the plan or changes in the information required to be included in the summary plan description); and

(ii) Any other document described in section 104(b)(4) of the Act with respect to which a participant or beneficiary has requested, in writing, a copy from the plan administrator and which the administrator has failed or refused to furnish to the participant or beneficiary.

(2) *Multiple requests for document(s).* Multiple requests under this section for the same or similar document or documents shall be considered separate requests for purposes of § 2560.502c–6(a).

(b) For purposes of this section, a participant or beneficiary will include any individual who is:

(1) A participant or beneficiary within the meaning of ERISA sections 3(7) and 3(8), respectively;

(2) An alternate payee under a qualified domestic relations order (see ERISA section 206(d)(3)(K)) or prospective alternate payee (spouses, former spouses, children or other dependents);

(3) A qualified beneficiary under COBRA (see ERISA section 607(3)) or prospective qualified beneficiary (spouse or dependent child);

(4) An alternate recipient under a qualified medical child support order (see ERISA section 609(a)(2)(C)) or a prospective alternate recipient; or

(5) A representative of any of the foregoing.

(c) *Service of request.* Requests under this section shall be served in accordance with § 2560.502c–6(i).

(d) *Furnishing documents.* A document shall be deemed to be furnished to the Secretary on the date the document is received by the Department of Labor at the address specified in the request; or, if a document is delivered by certified mail, the date on which the document is mailed to the Department of Labor at the address specified in the request.

## PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

3. The authority citation for part 2560 continues to read as follows:

**Authority:** Secs. 502, 505 of ERISA, 29 U.S.C. 1132, 1135, and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

Section 2560.502–1 also issued under sec. 502(b)(2), 29 U.S.C. 1132(b)(2)

Section 2560.502i–1 also issued under sec. 502(i), 29 U.S.C. 1132(i).

Section 2560.503–1 also issued under sec. 503, 29 U.S.C. 1133.

4. Add § 2560.502c–6 to read as follows:

### § 2560.502c–6 Civil penalties under section 502(c)(6).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(6) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator (within the meaning of section 3(16)(A) of the Act) of an employee benefit plan (within the meaning of section 3(3) of the Act and § 2510.3–1 of this chapter) shall be liable for civil penalties assessed by the Secretary under section 502(c)(6) of the Act in each case in which there is a failure or refusal to furnish to the Secretary documents requested under section 104(a)(6) of the Act and § 2520.104a–8 of this chapter.

(2) For purposes of this section, a failure or refusal to furnish documents shall mean a failure or refusal to furnish, in whole or in part, the documents requested under section 104(a)(6) of the Act and § 2520.104a–8 of this chapter at the time and in the manner prescribed in the request.

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(6) of the Act shall be an amount up to $100 a day determined by the Department of Labor, taking into consideration the amount of willfulness of the failure or refusal to furnish the documents requested under section 104(a)(6) of the Act, but in no event in excess of $1,000 per request. Subject to paragraph (b)(2) of this section, the amount shall be computed from the date of the administrator's failure or refusal to furnish any document or documents requested by the Department.

(2) For purposes of calculating the amount to be assessed under this section, the date of a failure or refusal to furnish documents shall not be earlier than the thirtieth day after service of the request under section 104(a)(6) of ERISA and § 2520.104a–8 of this chapter.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(6) of the Act, the Department shall provide to the administrator of the plan a written notice that indicates the Department's intent to assess a penalty under section 502(c)(6) of the Act, the amount of the penalty, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Waiver of assessed penalty.* The Department may waive all or part of the penalty to be assessed under section 502(c)(6) of the Act on a showing by the administrator that the failure or refusal to furnish a document or documents requested by the Secretary was the result of matters reasonably beyond the administrator's control.

(e) *Statement showing matters reasonably beyond the control of the plan administrator.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have 30 days from the date of the service of the notice, as described in paragraph (i) of this section, to file a statement that the failure resulted from matters reasonably beyond the control of the administrator or that the penalty, as calculated, should not be assessed. The statement must be in writing and set forth all the facts alleged as matters reasonably beyond the control of the administrator. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of matters reasonably beyond the control of the plan administrator.* Failure to file a statement of matters reasonably beyond the control of the administrator within the 30-day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(6) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.111(g) of this chapter.

(g) *Notice of determination on statement of matters reasonably beyond the control of the plan administrator.* (1) The Department, following a review of all of the facts alleged in support of a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (b) of this section. This notice is a ''pleading'' for purposes of § 2570.111(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) indicating the Department's intention to assess a penalty shall become a final order, within the meaning of § 2570.111(g) of this chapter, 30 days after the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will become the final order of the Department of Labor, unless, within 30 days from the date of the service of the notice, the administrator or representative thereof files a request for a hearing under § 2570.110 through 2570.121 of this chapter, and files an answer to the notice. The request for hearing and answer shall be filed in accordance with § 2570.112 of this chapter. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notice.* (1) Service of notice under this section shall be made by:

(i) Delivering a copy to the administrator or representative thereof;

(ii) Leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) Mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If done by regular mail, service is complete upon receipt by the addressee.

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to furnish the document or documents requested under section 104(a)(6) of the Act and its implementing regulations (§ 2520.104a–8 of this chapter), all such persons shall be jointly and severally liable with respect to such failure.

(2) Any person, or persons under paragraph (j)(1) of this section, against whom a civil penalty has been assessed under section 502(c)(6) of the Act pursuant to a final order, within the meaning of § 2570.111(g) of this chapter, shall be personally liable for the payment of such penalty.

(k) *Cross-reference.* See §§ 2570.110 through 2570.121 of this chapter for procedural rules relating to administrative hearings under section 502(c)(6) of the Act.

## PART 2570—PROCEDURAL REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

5. Revise the authority citation for Part 2570 to read as set forth below:

**Authority:** 29 U.S.C. 1108 (a), 1132 (c), 1132 (i), 1135; 5 U.S.C. 8477(c)(3); Reorganization Plan no. 4 of 1978; Secretary of Labor's Order 1–87.

Subpart A is also issued under 29 U.S.C. 1132(c)(1).

Subpart F is also issued under sec. 4, Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by sec. 31001(s)(1), Pub. L. 104–134, 110 Stat. 1321–373.

6. Add new Subpart F to part 2570 to read as follows:

### Subpart F—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(6)

Sec.

2570.110 Scope of rules.
2570.111 Definitions.
2570.112 Service: Copies of documents and pleadings.
2570.113 Parties, how designated.
2570.114 Consequences of default.
2570.115 Consent order or settlement.
2570.116 Scope of discovery.
2570.117 Summary decision.
2570.118 Decision of the administrative law judge.
2570.119 Review by the Secretary.
2570.120 Scope of review.
2570.121 Procedures for review by the Secretary.

### Subpart F—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(6)

#### § 2570.110 Scope of rules.

The rules of practice set forth in this subpart are applicable to ''502(c)(6) civil penalty proceedings'' (as defined in § 2570.111(n) of this subpart) under section 502(c)(6) of the Employee Retirement Income Security Act of 1974. The rules of procedure for administrative hearings published by the Department's Office of Law Judges at Part 18 of this title will apply to matters arising under ERISA section 502(c)(6) except as modified by this section. These proceedings shall be conducted as expeditiously as possible, and the parties shall make every effort to avoid delay at each stage of the proceedings.

#### § 2570.111 Definitions.

For section 502(c)(6) civil penalty proceedings, this section shall apply in lieu of the definitions in § 18.2 of this title:

(a) *Adjudicatory proceeding* means a judicial-type proceeding before an administrative law judge leading to the formulation of a final order;

(b) *Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) *Answer* means a written statement that is supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to § 2560.502c–6(g) of this chapter;

(d) *Commencement of proceeding* is the filing of an answer by the respondent;

(e) *Consent agreement* means any written document containing a specified proposed remedy or other relief acceptable to the Department and consenting parties;

(f) *ERISA* means the Employee Retirement Income Security Act of 1974, as amended;

(g) *Final order* means the final decision or action of the Department of Labor concerning the assessment of a civil penalty under ERISA section 502(c)(6) against a particular party. Such final order may result from a decision of an administrative law judge or the Secretary, the failure of a party to file a statement of matters reasonably beyond the control of the plan administrator described in § 2560.502c–6(e) of this chapter within the prescribed time limits, or the failure of a party to invoke the procedures for hearings or appeals under this title within the prescribed time limits. Such a final order shall constitute final agency action within the meaning of 5 U.S.C. 704;

(h) *Hearing* means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission, to the administrative law judge;

(i) *Order* means the whole or any part of a final procedural or substantive disposition of a matter under ERISA section 502(c)(6);

(j) *Party* includes a person or agency named or admitted as a party to a proceeding;

(k) *Person* includes an individual, partnership, corporation, employee benefit plan, association, exchange or other entity or organization;

(l) *Petition* means a written request, made by a person or party, for some affirmative action;

(m) *Pleading* means the notice as defined in § 2560.502c–6(g) of this chapter, the answer to the notice, any supplement or amendment thereto, and any reply that may be permitted to any answer, supplement or amendment;

(n) *502(c)(6) civil penalty proceeding* means an adjudicatory proceeding relating to the assessment of a civil penalty provided for in section 502(c)(6) of ERISA;

(o) *Respondent* means the party against whom the Department is seeking to assess a civil sanction under ERISA section 502(c)(6);

(p) *Secretary* means the Secretary of Labor and includes, pursuant to any delegation of authority by the Secretary, any assistant secretary (including the Assistant Secretary for Pension and Welfare Benefits), administrator, commissioner, appellate body, board, or other official; and

(q) *Solicitor* means the Solicitor of Labor or his or her delegate.

#### § 2570.112 Service: Copies of documents and pleadings.

For 502(c)(6) penalty proceedings, this section shall apply in lieu of § 18.3 of this title.

(a) *General.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, 800 K Street, NW., Suite 400, Washington, DC 20001–8002, or to the OALJ Regional Office to which the proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties.* All motions, petitions, pleadings, briefs, or other documents

shall be filed with the Office of Administrative Law Judges with a copy, including any attachments, to all other parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The Department shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA section 502(c)(6) Proceeding, P.O. Box 1914, Washington, DC 20013. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* Service of orders, decisions and all other documents shall be made by regular mail to the last known address.

(d) *Form of pleadings.* (1) Every pleading shall contain information indicating the name of the Pension and Welfare Benefits Administration (PWBA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Office of Administrative Law Judges and a designation of the type of pleading or paper (e.g., notice, motion to dismiss, etc.). The pleading or paper shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size 8½ × 11 inch paper.

(2) Illegible documents, whether handwritten, typewritten, photocopied, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

**§ 2570.113 Parties, how designated.**

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.10 of this title.

(a) The term ''party'' wherever used in this subpart shall include any natural person, corporation, employee benefit plan, association, firm, partnership, trustee, receiver, agency, public or private organization, or government agency. A party against whom a civil penalty is sought shall be designated as ''respondent''. The Department shall be designated as the ''complainant''.

(b) Other persons or organizations shall be permitted to participate as parties only if the administrative law judge finds that the final decision could directly and adversely affect them or the class they represent, that they may contribute materially to the disposition of the proceedings and their interest is not adequately represented by existing parties, and that in the discretion of the administrative law judge the participation of such persons or organizations would be appropriate.

(c) A person or organization not named as a respondent wishing to participate as a party under this section shall submit a petition to the administrative law judge within fifteen (15) days after the person or organization has knowledge of or should have known about the proceeding. The petition shall be filed with the administrative law judge and served on each person or organization who has been made a party at the time of filing. Such petition shall concisely state:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner intends to present witnesses.

(d) Objections to the petition may be filed by a party within fifteen (15) days of the filing of the petition. If objections to the petition are filed, the administrative law judge shall then determine whether petitioner has the requisite interest to be a party in the proceedings, as defined in paragraph (b) of this section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the administrative law judge may request all such petitioners to designate a single representative, or he or she may recognize one or more of such petitioners. The administrative law judge shall give each such petitioner, as well as the parties, written notice of the decision on his or her petition. For each petition granted, the administrative law judge shall provide a brief statement of the basis of the decision. If the petition is denied, he or she shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae.

**§ 2570.114 Consequences of default.**

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.5 (a) and (b) of this title. Failure of the respondent to file an answer to the notice of determination described in § 2560.502c–6(g) of this chapter within the 30-day period provided by § 2560.502c–6(h) of this chapter shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the notice of determination, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(6) of the Act. Such notice shall then become the final order of the Secretary.

**§ 2570.115 Consent order or settlement.**

For 502(c)(6) civil penalty proceedings, the following shall apply in lieu of § 18.9 of this title.

(a) *General.* At any time after the commencement of a proceeding, but at least five (5) days prior to the date set for hearing, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. The allowance of such a deferral and the duration thereof shall be in the discretion of the administrative law judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of reaching an agreement which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice and the agreement;

(3) A waiver of any further procedural steps before the administrative law judge;

(4) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(5) That the order and decision of the administrative law judge shall be final agency action.

(c) *Submission.* On or before the expiration of the time granted for negotiations, but, in any case, at least five (5) days prior to the date set for hearing, the parties or their authorized representative or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order to the administrative law judge; or

(2) Notify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action subject to compliance with the terms of the settlement; or

(3) Inform the administrative law judge that agreement cannot be reached.

(d) *Disposition.* In the event a settlement agreement containing

consent findings and an order is submitted within the time allowed therefor, the administrative law judge shall issue a decision incorporating such findings and agreement within 30 days of his receipt of such document. The decision of the administrative law judge shall incorporate all of the findings, terms, and conditions of the settlement agreement and consent order of the parties. Such decision shall become final agency action within the meaning of 5 U.S.C. 704.

(e) *Settlement without consent of all parties.* In cases in which some, but not all, of the parties to a proceeding submit a consent agreement to the administrative law judge, the following procedure shall apply:

(1) If all of the parties have not consented to the proposed settlement submitted to the administrative law judge, then such non-consenting parties must receive notice, and a copy, of the proposed settlement at the time it is submitted to the administrative law judge;

(2) Any non-consenting party shall have fifteen (15) days to file any objections to the proposed settlement with the administrative law judge and all other parties;

(3) If any party submits an objection to the proposed settlement, the administrative law judge shall decide within 30 days after receipt of such objections whether he shall sign or reject the proposed settlement. Where the record lacks substantial evidence upon which to base a decision or there is a genuine issue of material fact, then the administrative law judge may establish procedures for the purpose of receiving additional evidence upon which a decision on the contested issues may reasonably be based;

(4) If there are no objections to the proposed settlement, or if the administrative law judge decides to sign the proposed settlement after reviewing any such objections, the administrative law judge shall incorporate the consent agreement into a decision meeting the requirements of paragraph (d) of this section.

**§ 2570.116 Scope of discovery.**

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.14 of this title.

(a) A party may file a motion to conduct discovery with the administrative law judge. The motion for discovery shall be granted by the administrative law judge only upon a showing of good cause. In order to establish ''good cause'' for the purposes of this section, a party must show that the discovery requested relates to a genuine issue as to a material fact that is relevant to the proceeding. The order of the administrative law judge shall expressly limit the scope and terms of discovery to that for which ''good cause'' has been shown, as provided in this paragraph.

(b) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon showing that the party seeking discovery has substantial need of the materials or information in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials or information by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representatives of a party concerning the proceeding.

**§ 2570.117 Summary decision.**

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.41 of this title.

(a) *No genuine issue of material fact.* (1) Where no issue of a material fact is found to have been raised, the administrative law judge may issue a decision which, in the absence of an appeal pursuant to §§ 2570.119 through 2570.121 of this subpart, shall become a final order.

(2) A decision made under this paragraph (a) shall include a statement of:

(i) Findings of fact and conclusions of law, and the reasons therefor, on all issues presented; and

(ii) Any terms and conditions of the rule or order.

(3) A copy of any decision under this paragraph shall be served on each party.

(b) *Hearings on issues of fact.* Where a genuine question of a material fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing.

**§ 2570.118 Decision of the administrative law judge.**

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.57 of this title.

(a) *Proposed findings of fact, conclusions, and order.* Within twenty (20) days of the filing of the transcript of the testimony, or such additional time as the administrative law judge may allow, each party may file with the administrative law judge, subject to the judge's discretion, proposed findings of fact, conclusions of law, and order together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the administrative law judge.* Within a reasonable time after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within 30 days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the administrative law judge shall make his or her decision. The decision of the administrative law judge shall include findings of fact and conclusions of law with reasons therefor upon each material issue of fact or law presented on the record. The decision of the administrative law judge shall be based upon the whole record. In a contested case in which the Department and the Respondent have presented their positions to the administrative law judge pursuant to the procedures for 502(c)(6) civil penalty proceedings as set forth in this subpart, the penalty (if any) which may be included in the decision of the administrative law judge shall be limited to the penalty expressly provided for in section 502(c)(6) of ERISA. It shall be supported by reliable and probative evidence. The decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704 unless an appeal is made pursuant to the procedures set forth in §§ 2570.119 through 2570.121.

**§ 2570.119 Review by the Secretary.**

(a) The Secretary may review a decision of an administrative law judge. Such a review may occur only when a party files a notice of appeal from a decision of an administrative law judge within twenty (20) days of the issuance of such decision. In all other cases, the decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704.

(b) A notice of appeal to the Secretary shall state with specificity the issue(s) in the decision of the administrative law judge on which the party is seeking review. Such notice of appeal must be served on all parties of record.

(c) Upon receipt of a notice of appeal, the Secretary shall request the Chief Administrative Law Judge to submit to

him or her a copy of the entire record before the administrative law judge.

**§ 2570.120 Scope of review.**

The review of the Secretary shall not be a *de novo* proceeding but rather a review of the record established before the administrative law judge. There shall be no opportunity for oral argument.

**§ 2570.121 Procedures for review by the Secretary.**

(a) Upon receipt of the notice of appeal, the Secretary shall establish a briefing schedule which shall be served on all parties of record. Upon motion of one or more of the parties, the Secretary may, in his or her discretion, permit the submission of reply briefs.

(b) The Secretary shall issue a decision as promptly as possible after receipt of the briefs of the parties. The Secretary may affirm, modify, or set aside, in whole or in part, the decision on appeal and shall issue a statement of reasons and bases for the action(s) taken. Such decision by the Secretary shall be final agency action within the meaning of 5 U.S.C. 704.

Signed at Washington, DC, this 22nd day of December, 2001.

**Ann L. Combs,**

*Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 02–141 Filed 1–4–02; 8:45 am]

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Vol. 67, No. 4

Monday, January 7, 2002

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## FEDERAL REGISTER PAGES AND DATE, JANUARY

1–264 ..... 2
265–478 ..... 3
479–638 ..... 4
639–790 ..... 7

## CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
7516 ..... 479
**Executive Orders:**
12543 (See Notice of January 3, 2002) ..... 637
12544 (See Notice of January 3, 2002) ..... 637
13182 (Superseded by EO 13249) ..... 639
13249 ..... 639
**Administrative Orders:**
**Notices:**
January 3, 2002 ..... 637

**7 CFR**

1464 ..... 481
1721 ..... 484
**Proposed Rules:**
Ch. I ..... 525
330 ..... 697
800 ..... 25
Ch. IX ..... 525
Ch. X ..... 525
Ch. XI ..... 525
1464 ..... 526

**9 CFR**

93 ..... 649
94 ..... 649

**10 CFR**

**Proposed Rules:**
35 ..... 274

**14 CFR**

25 ..... 487
39 ..... 1, 123, 265, 489, 491, 492, 494, 495, 497, 499, 500, 502, 503, 505, 507, 509, 651, 653
71 ..... 510, 511, 512, 513, 514, 515, 516, 517
97 ..... 267, 269
107 ..... 655
108 ..... 655
330 ..... 250
**Proposed Rules:**
39 ..... 29, 31, 33, 35, 38, 40, 530, 534, 537, 538, 541, 542, 544, 547, 550, 697, 700
71 ..... 552, 702, 703, 704, 705, 706
93 ..... 123
330 ..... 263

**15 CFR**

743 ..... 458
752 ..... 458
772 ..... 458
774 ..... 458

**16 CFR**

4 ..... 123

**17 CFR**

228 ..... 232
229 ..... 232
230 ..... 228
240 ..... 232
241 ..... 6
249 ..... 232

**18 CFR**

**Proposed Rules:**
284 ..... 44

**21 CFR**

173 ..... 271

**26 CFR**

1 ..... 8
602 ..... 8
**Proposed Rules:**
1 ..... 48
46 ..... 707

**29 CFR**

102 ..... 656, 657
1912 ..... 658
1912a ..... 658
2520 ..... 772, 777
2560 ..... 772, 777
2570 ..... 777

**30 CFR**

**Proposed Rules:**
250 ..... 275

**33 CFR**

110 ..... 17
165 ..... 517

**37 CFR**

1 ..... 520

**38 CFR**

52 ..... 660
**Proposed Rules:**
3 ..... 200
17 ..... 200
21 ..... 200

**39 CFR**

**Proposed Rules:**
111 ..... 275

**40 CFR**

52 ..... 18, 19
62 ..... 271
**Proposed Rules:**
3 ..... 278
51 ..... 278

52.....50
60.....278
62.....279
63.....278
70.....278
123.....278
142.....278
145.....278
162.....278
233.....278
257.....278
258.....278
271.....278
281.....278
403.....278
501.....278
745.....278
763.....278

**44 CFR**

67.....675

**Proposed Rules:**

67.....709

**47 CFR**

6.....678
7.....678
76.....678

**48 CFR**

**Proposed Rules:**

23.....631
52.....631

**49 CFR**

1.....629
219.....21
240.....22

**Proposed Rules:**

529.....710
531.....710
533.....710
535.....710
537.....710
538.....710, 713
541.....710
542.....710
543.....710
544.....710
551.....710
552.....710
553.....710
554.....710
555.....710
556.....710
557.....710
564.....710
565.....710
566.....710
567.....710
568.....710
569.....710
570.....710
572.....710
573.....710
574.....710
575.....710
576.....710
577.....710
578.....710
579.....710

**50 CFR**

17.....680

**Proposed Rules:**

17.....280
635.....629
697.....282

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT JANUARY 7, 2002

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Exportation and importation of animals and animal products:

Foot-and-mouth disease; disease status change—

Japan; published 1-7-02

Plant Protection and Quarantine Treatment Manual; incorporation by reference:

Limes; hot water treatment; published 11-8-01

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

Connecticut; published 12-6-01

Wisconsin; published 11-8-01

Antarctica; nongovernmental activities; environmental impact assessment; assessment and coordination requirements; published 12-6-01

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; published 11-8-01

**FEDERAL COMMUNICATIONS COMMISSION**

Common carrier services:

Satellite communications—

18 GHz band redesignation, satellite earth stations blanket licensing in Ka-band, and additional spectrum allocation for broadcast satellite-service use; published 12-7-01

Radio stations; table of assignments:

Georgia; published 12-5-01

Television broadcasting:

Cable television systems—

Sexually explicit adult video service programming scrambling; repeal of rules; published 1-7-02

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Multifamily properties; civil money penalties; published 12-6-01

**LABOR DEPARTMENT**

**Occupational Safety and Health Administration**

Procedural rules:

Advisory committees on standards and Occupational Safety and Health National Advisory Committee; discretion by Labor Secretary to remove or replace members; published 1-7-02

**LABOR DEPARTMENT**

**Wage and Hour Division**

Civil monetary penalties, inflation adjustment; published 12-7-01

**NATIONAL LABOR RELATIONS BOARD**

Freedom of Information Act; implementation; published 1-7-02

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Agusta S.p.A.; published 12-3-01

CFE Co.; published 12-21-01

Eurocopter France; published 12-3-01

Reims Aviation S.A.; published 11-15-01

Reims Aviation S.A.; correction; published 11-28-01

Short Brothers; published 12-3-01

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

California Prune/Plum (Tree Removal) Diversion Program; implementation; comments due by 1-16-02; published 12-17-01 [FR 01-31038]

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Northeastern United States fisheries—

Northeast Multispecies Fishing Capacity Reduction Program; comments due by 1-18-02; published 12-19-01 [FR 01-31262]

**COMMODITY FUTURES TRADING COMMISSION**

Security futures products:

Large trader reports; reporting levels; comments due by 1-14-02; published 12-13-01 [FR 01-30812]

**CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**

Retired and Senior Volunteer Program; amendments; comments due by 1-14-02; published 11-13-01 [FR 01-28254]

**DEFENSE DEPARTMENT**

Federal Acquisition Regulation (FAR):

Indefinite-delivery contracts; progress payment requests; comments due by 1-14-02; published 11-14-01 [FR 01-28230]

**ENVIRONMENTAL PROTECTION AGENCY**

Air pollutants, hazardous; national emission standards:

Phosphoric acid manufacturing and phosphate fertilizers production plants; comments due by 1-16-02; published 12-17-01 [FR 01-31009]

**ENVIRONMENTAL PROTECTION AGENCY**

Air pollutants, hazardous; national emission standards:

Phosphoric acid manufacturing and phosphate fertilizers production plants; comments due by 1-16-02; published 12-17-01 [FR 01-31010]

Air pollution control; new motor vehicles and engines:

Nonroad large spark ignition engines and recreational engines (marine and land-based); emissions control; comments due by 1-18-02; published 12-18-01 [FR 01-31178]

Air programs:

Ambient air quality standards, national—

Ozone; response to remand; comments due by 1-14-02; published 11-14-01 [FR 01-27820]

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Kansas; comments due by 1-18-02; published 12-19-01 [FR 01-31238]

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Kansas; comments due by 1-18-02; published 12-19-01 [FR 01-31239]

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

Wisconsin; comments due by 1-14-02; published 12-14-01 [FR 01-30814]

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

Wisconsin; comments due by 1-14-02; published 12-14-01 [FR 01-30815]

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 1-14-02; published 12-13-01 [FR 01-30740]

Water pollution; discharge of pollutants (NPDES):

Concentrated animal feeding operations; permit regulation and effluent limitations guidelines and standards; data availability; comments due by 1-15-02; published 11-21-01 [FR 01-28738]

**FEDERAL COMMUNICATIONS COMMISSION**

Radio stations; table of assignments:

California; comments due by 1-14-02; published 12-10-01 [FR 01-30387]

Television stations; table of assignments:

Utah and Nevada; comments due by 1-14-02; published 12-18-01 [FR 01-31187]

**GENERAL SERVICES ADMINISTRATION**

Federal Acquisition Regulation (FAR):

Indefinite-delivery contracts; progress payment requests; comments due

by 1-14-02; published 11-14-01 [FR 01-28230]

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

**Federal Housing Enterprise Oversight Office**

Risk-based capital:

Counterparty haircuts, multifamily loans, and refunding; technical amendments and corrections; comments due by 1-17-02; published 12-18-01 [FR 01-30898]

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Endangered and threatened species:

Critical habitat designations—

La Graciosa thistle, etc.; comments due by 1-14-02; published 11-15-01 [FR 01-28041]

Santa Cruz tarplant; comments due by 1-14-02; published 11-15-01 [FR 01-28040]

Pygmy rabbit; Columbia Basin distinct population segment; comments due by 1-14-02; published 11-30-01 [FR 01-29612]

**INTERIOR DEPARTMENT**

**National Park Service**

World Heritage Convention; comments due by 1-18-02; published 11-19-01 [FR 01-28256]

**JUSTICE DEPARTMENT**

**Immigration and Naturalization Service**

Immigration:

Aliens—

Continued detention of aliens subject to removal orders; comments due by 1-14-02; published 11-14-01 [FR 01-28369]

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

Acquisition regulations:

Scientific and technical reports; comments due by 1-14-02; published 11-14-01 [FR 01-28242]

Federal Acquisition Regulation (FAR):

Indefinite-delivery contracts; progress payment requests; comments due by 1-14-02; published 11-14-01 [FR 01-28230]

**NUCLEAR REGULATORY COMMISSION**

Rulemaking petitions:

National Mining Association; comments due by 1-16-02; published 11-2-01 [FR 01-27536]

Three Mile Island Alert; comments due by 1-16-02; published 11-2-01 [FR 01-27576]

**SECURITIES AND EXCHANGE COMMISSION**

Investment companies:

Actively managed exchange-traded funds; comments due by 1-14-02; published 11-15-01 [FR 01-28572]

Affliliated companies; mergers; comments due by 1-18-02; published 11-15-01 [FR 01-28583]

**SOCIAL SECURITY ADMINISTRATION**

Social security benefits:

Federal old age, survivors, and disability insurance—

Digestive system impairments; medical criteria evaluation; comments due by 1-14-02; published 11-14-01 [FR 01-28455]

**SOCIAL SECURITY ADMINISTRATION**

Social security benefits:

Federal old age, survivors, and disability insurance—

Musculoskeletal system and related criteria; medical criteria for disability determination; comments due by 1-18-02; published 11-19-01 [FR 01-28456]

**TRANSPORTATION DEPARTMENT**

Procedural regulations:

Air Transportation Safety and System Stabilization Act; air carriers compensation procedures

Set-aside of compensation funds for air ambulances, air tour operators, etc.; comments due by 1-16-02; published 1-2-02 [FR 01-32177]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Air traffic operating and flight rules, etc.:

Criminal history records checks; comments due by 1-17-02; published 1-7-02 [FR 02-00358]

Airworthiness directives:

Boeing; comments due by 1-14-02; published 11-13-01 [FR 01-28334]

CFE Co.; comments due by 1-18-02; published 12-4-01 [FR 01-29947]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness standards:

Special conditions—

Canadair Model CL-600-2A12 airplanes; comments due by 1-14-02; published 12-13-01 [FR 01-30638]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Class E airspace; comments due by 1-16-02; published 12-17-01 [FR 01-31000]

**TREASURY DEPARTMENT**

**Customs Service**

Merchandise entry:

Single entry for split shipments; comments due by 1-15-02; published 11-16-01 [FR 01-28551]

**VETERANS EMPLOYMENT AND TRAINING SERVICE**

Annual report from Federal contractors; comments due by 1-18-02; published 12-19-01 [FR 01-31188]

## 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*.

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**H.R. 3442/P.L. 107–106**

National Museum of African American History and Culture Plan for Action Presidential Commission Act of 2001 (Dec. 28, 2001; 115 Stat. 1009)

**S. 1438/P.L. 107–107**

National Defense Authorization Act for Fiscal Year 2002 (Dec. 28, 2001; 115 Stat. 1012)

**H.R. 2883/P.L. 107–108**

Intelligence Authorization Act for Fiscal Year 2002 (Dec. 28, 2001; 115 Stat. 1394)

**Last List January 3, 2002**

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| **1, 2 (2** Reserved) | (869–044–00001–6) | 6.50 | [4]Jan. 1, 2001 |
| **3** (1997 Compilation and Parts 100 and 101) | (869–044–00002–4) | 36.00 | [1] Jan. 1, 2001 |
| **4** | (869–044–00003–2) | 9.00 | Jan. 1, 2001 |
| **5 Parts:** | | | |
| 1–699 | (869–044–00004–1) | 53.00 | Jan. 1, 2001 |
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| 1200–End, 6 (6 Reserved) | (869–044–00006–7) | 55.00 | Jan. 1, 2001 |
| **7 Parts:** | | | |
| 1–26 | (869–044–00007–5) | 40.00 | [4]Jan. 1, 2001 |
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| **8** | (869–044–00022–9) | 54.00 | Jan. 1, 2001 |
| **9 Parts:** | | | |
| 1–199 | (869–044–00023–7) | 55.00 | Jan. 1, 2001 |
| 200–End | (869–044–00024–5) | 53.00 | Jan. 1, 2001 |
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| 1–50 | (869–044–00025–3) | 55.00 | Jan. 1, 2001 |
| 51–199 | (869–044–00026–1) | 52.00 | Jan. 1, 2001 |
| 200–499 | (869–044–00027–0) | 53.00 | Jan. 1, 2001 |
| 500–End | (869–044–00028–8) | 55.00 | Jan. 1, 2001 |
| **11** | (869–044–00029–6) | 31.00 | Jan. 1, 2001 |
| **12 Parts:** | | | |
| 1–199 | (869–044–00030–0) | 27.00 | Jan. 1, 2001 |
| 200–219 | (869–044–00031–8) | 32.00 | Jan. 1, 2001 |
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| 600–End | (869–044–00035–1) | 57.00 | Jan. 1, 2001 |
| **13** | (869–044–00036–9) | 45.00 | Jan. 1, 2001 |
| **14 Parts:** | | | |
| 1–59 | (869–044–00037–7) | 57.00 | Jan. 1, 2001 |
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| 140–199 | (869–044–00039–3) | 26.00 | Jan. 1, 2001 |
| 200–1199 | (869–044–00040–7) | 44.00 | Jan. 1, 2001 |
| 1200–End | (869–044–00041–5) | 37.00 | Jan. 1, 2001 |
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| 0–299 | (869–044–00042–3) | 36.00 | Jan. 1, 2001 |
| 300–799 | (869–044–00043–1) | 54.00 | Jan. 1, 2001 |
| 800–End | (869–044–00044–0) | 40.00 | Jan. 1, 2001 |
| **16 Parts:** | | | |
| 0–999 | (869–044–00045–8) | 45.00 | Jan. 1, 2001 |
| 1000–End | (869–044–00046–6) | 53.00 | Jan. 1, 2001 |
| **17 Parts:** | | | |
| 1–199 | (869–044–00048–2) | 45.00 | Apr. 1, 2001 |
| 200–239 | (869–044–00049–1) | 51.00 | Apr. 1, 2001 |
| 240–End | (869–044–00050–4) | 55.00 | Apr. 1, 2001 |
| **18 Parts:** | | | |
| 1–399 | (869–044–00051–2) | 56.00 | Apr. 1, 2001 |
| 400–End | (869–044–00052–1) | 23.00 | Apr. 1, 2001 |
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| 1–140 | (869–044–00053–9) | 54.00 | Apr. 1, 2001 |
| 141–199 | (869–044–00054–7) | 53.00 | Apr. 1, 2001 |
| 200–End | (869–044–00055–5) | 20.00 | [5]Apr. 1, 2001 |
| **20 Parts:** | | | |
| 1–399 | (869–044–00056–3) | 45.00 | Apr. 1, 2001 |
| 400–499 | (869–044–00057–1) | 57.00 | Apr. 1, 2001 |
| 500–End | (869–044–00058–0) | 57.00 | Apr. 1, 2001 |
| **21 Parts:** | | | |
| 1–99 | (869–044–00059–8) | 37.00 | Apr. 1, 2001 |
| 100–169 | (869–044–00060–1) | 44.00 | Apr. 1, 2001 |
| 170–199 | (869–044–00061–0) | 45.00 | Apr. 1, 2001 |
| 200–299 | (869–044–00062–8) | 16.00 | Apr. 1, 2001 |
| 300–499 | (869–044–00063–6) | 27.00 | Apr. 1, 2001 |
| 500–599 | (869–044–00064–4) | 44.00 | Apr. 1, 2001 |
| 600–799 | (869–044–00065–2) | 15.00 | Apr. 1, 2001 |
| 800–1299 | (869–044–00066–1) | 52.00 | Apr. 1, 2001 |
| 1300–End | (869–044–00067–9) | 20.00 | Apr. 1, 2001 |
| **22 Parts:** | | | |
| 1–299 | (869–044–00068–7) | 56.00 | Apr. 1, 2001 |
| 300–End | (869–044–00069–5) | 42.00 | Apr. 1, 2001 |
| **23** | (869–044–00070–9) | 40.00 | Apr. 1, 2001 |
| **24 Parts:** | | | |
| 0–199 | (869–044–00071–7) | 53.00 | Apr. 1, 2001 |
| 200–499 | (869–044–00072–5) | 45.00 | Apr. 1, 2001 |
| 500–699 | (869–044–00073–3) | 27.00 | Apr. 1, 2001 |
| 700–1699 | (869–044–00074–1) | 55.00 | Apr. 1, 2001 |
| 1700–End | (869–044–00075–0) | 28.00 | Apr. 1, 2001 |
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| §§ 1.851–1.907 | (869–044–00085–7) | 54.00 | Apr. 1, 2001 |
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| 2–29 | (869–044–00089–0) | 54.00 | Apr. 1, 2001 |
| 30–39 | (869–044–00090–3) | 37.00 | Apr. 1, 2001 |
| 40–49 | (869–044–00091–1) | 25.00 | Apr. 1, 2001 |
| 50–299 | (869–044–00092–0) | 23.00 | Apr. 1, 2001 |
| 300–499 | (869–044–00093–8) | 54.00 | Apr. 1, 2001 |
| 500–599 | (869–044–00094–6) | 12.00 | [5]Apr. 1, 2001 |
| 600–End | (869–044–00095–4) | 15.00 | Apr. 1, 2001 |
| **27 Parts:** | | | |
| 1–199 | (869–044–00096–2) | 57.00 | Apr. 1, 2001 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 200–End | (869–044–00097–1) | 26.00 | Apr. 1, 2001 |
| **28 Parts:** | | | |
| 0-42 | (869–044–00098–9) | 55.00 | July 1, 2001 |
| 43-end | (869-044-00099-7) | 50.00 | July 1, 2001 |
| **29 Parts:** | | | |
| 0–99 | (869–044–00100–4) | 45.00 | July 1, 2001 |
| 100–499 | (869–044–00101–2) | 14.00 | [6]July 1, 2001 |
| 500–899 | (869–044–00102–1) | 47.00 | [6]July 1, 2001 |
| 900–1899 | (869–044–00103–9) | 33.00 | July 1, 2001 |
| 1900–1910 (§§ 1900 to 1910.999) | (869–044–00104–7) | 55.00 | July 1, 2001 |
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| 1911–1925 | (869–044–00106–3) | 20.00 | [6]July 1, 2001 |
| 1926 | (869–044–00107–1) | 45.00 | July 1, 2001 |
| 1927–End | (869–044–00108–0) | 55.00 | July 1, 2001 |
| **30 Parts:** | | | |
| 1–199 | (869–044–00109–8) | 52.00 | July 1, 2001 |
| 200–699 | (869–044–00110–1) | 45.00 | July 1, 2001 |
| 700–End | (869–044–00111–7) | 53.00 | July 1, 2001 |
| **31 Parts:** | | | |
| 0–199 | (869–044–00112–8) | 32.00 | July 1, 2001 |
| 200–End | (869–044–00113–6) | 56.00 | July 1, 2001 |
| **32 Parts:** | | | |
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| 1–39, Vol. II | | 19.00 | [2] July 1, 1984 |
| 1–39, Vol. III | | 18.00 | [2] July 1, 1984 |
| 1–190 | (869–044–00114–4) | 51.00 | [6]July 1, 2001 |
| 191–399 | (869–044–00115–2) | 57.00 | July 1, 2001 |
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| 630–699 | (869–044–00117–9) | 34.00 | July 1, 2001 |
| 700–799 | (869–044–00118–7) | 42.00 | July 1, 2001 |
| 800–End | (869–044–00119–5) | 44.00 | July 1, 2001 |
| **33 Parts:** | | | |
| 1–124 | (869–044–00120–9) | 45.00 | July 1, 2001 |
| 125–199 | (869–044–00121–7) | 55.00 | July 1, 2001 |
| 200–End | (869–044–00122–5) | 45.00 | July 1, 2001 |
| **34 Parts:** | | | |
| 1–299 | (869–044–00123–3) | 43.00 | July 1, 2001 |
| 300–399 | (869–044–00124–1) | 40.00 | July 1, 2001 |
| 400–End | (869–044–00125–0) | 56.00 | July 1, 2001 |
| **35** | (869–044–00126–8) | 10.00 | [6]July 1, 2001 |
| **36 Parts** | | | |
| 1–199 | (869–044–00127–6) | 34.00 | July 1, 2001 |
| 200–299 | (869–044–00128–4) | 33.00 | July 1, 2001 |
| 300–End | (869–044–00129–2) | 55.00 | July 1, 2001 |
| **37** | (869–044–00130–6) | 45.00 | July 1, 2001 |
| **38 Parts:** | | | |
| 0–17 | (869–044–00131–4) | 53.00 | July 1, 2001 |
| 18–End | (869–044–00132–2) | 55.00 | July 1, 2001 |
| **39** | (869–044–00133–1) | 37.00 | July 1, 2001 |
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| 1–399 | (869–042–00162–1) | 53.00 | Oct. 1, 2000 |
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| 166–199 | (869–044–00182–9) | 42.00 | Oct. 1, 2001 |
| 200–499 | (869–044–00183–7) | 36.00 | Oct. 1, 2001 |
| 500–End | (869–044–00184–5) | 23.00 | Oct. 1, 2001 |
| **47 Parts:** | | | |
| 0–19 | (869–042–00181–8) | 54.00 | Oct. 1, 2000 |
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| Title | Stock Number | Price | Revision Date |
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| 1200–End | (869–042–00199–1) | 21.00 | Oct. 1, 2000 |
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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.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained..