5–13–02 Monday
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# Federal Register

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# Rules and Regulations

Federal Register
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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket No. 01–081–2]**

### Imported Fire Ant; Addition to Quarantined Areas

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the imported fire ant regulations by designating as quarantined areas all or portions of five counties in Arkansas, three counties in Georgia, eight counties in North Carolina, and four counties in Tennessee. As a result of that action, the interstate movement of regulated articles from those areas was restricted. The interim rule was necessary in order to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

**EFFECTIVE DATE:** The interim rule became effective on January 2, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles L. Brown, Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4838.

**SUPPLEMENTARY INFORMATION:**

#### Background

In an interim rule effective January 2, 2002, and published in the **Federal Register** on January 9, 2002 (67 FR 1067–1070, Docket No. 01–081–1), we amended the imported fire ant regulations contained in §§ 301.81 through 301.81–10 by adding all or portions of five counties in Arkansas, three counties in Georgia, eight counties in North Carolina, and four counties in Tennessee to the list of quarantined areas in § 301.81–3. As a result of that action, the interstate movement of regulated articles from those areas was restricted.

Comments on the interim rule were required to be received on or before March 11, 2002. We received one comment by that date, from an association of State plant health officials. The comment supported the changes to the quarantine made by the interim rule. It also requested that the Animal and Plant Health Inspection Service consider making various other changes to the imported fire ant regulations in a separate rulemaking. We are considering those recommendations.

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

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

### PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 67 FR 1067–1070 on January 9, 2002.

**Authority:** 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 7th day of May, 2002.

**Peter Fernandez,**

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

[FR Doc. 02–11898 Filed 5–10–02; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 94

**[Docket No. 01–037–1]**

### Importation of Used Farm Equipment From Regions Affected With Foot-and-Mouth Disease

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

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

**SUMMARY:** We are amending the regulations concerning foot-and-mouth disease to prohibit the importation of used farm equipment from regions affected with foot-and-mouth disease unless the equipment has been steam-cleaned prior to export to the United States so that it is free of exposed dirt and other particulate matter. We are also providing that cleaned equipment that arrives at the port of arrival with a minimal amount of exposed dirt may, under certain conditions, be cleaned at the port of arrival. This action is necessary to help prevent the introduction of foot-and-mouth disease into the United States.

**DATES:** This interim rule is effective retroactively to March 31, 2001. We will consider all comments that are postmarked, delivered, or e-mailed by July 12, 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. 01–037–1, 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. 01–037–1. 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. 01–037–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS dockets published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Karen James-Preston, Assistant Director, Technical Trade Services Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–8364.

**SUPPLEMENTARY INFORMATION:**

## Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products into the United States in order to prevent the introduction of various animal diseases, including foot-and-mouth disease (FMD). FMD is a highly communicable viral disease, not found in the United States since 1929, that affects all cloven-hoofed ruminants, especially cattle and swine. The disease is highly communicable and is characterized by fever and blisterlike lesions on the tongue and lips, in the mouth, on the teats, and between the hooves. It causes severe losses in production of meat, milk, and other dairy products. Although many affected animals survive the disease, it leaves them debilitated. Because of the highly communicable nature of FMD, it is necessary to protect livestock that are free of the disease from any animals, animal products, or other articles that might be contaminated with the FMD virus.

Section 94.1(a) of the regulations lists regions of the world that are declared free of rinderpest (another highly communicable serious disease) or free of both FMD and rinderpest. FMD or rinderpest exists in all regions of the world not listed. The provisions of § 94.1(b) of the regulations prohibit, except for very limited exceptions, the importation into the United States of any ruminant or swine or any fresh (chilled or frozen) meat of any ruminant or swine that originates in any region in which FMD or rinderpest exists, or that enters a port that is located in or otherwise transits a region in which FMD or rinderpest exists.

Among the articles that could harbor the FMD virus is farm equipment that has been used on a premises containing infected animals and that has not been cleaned free of soil or other particulate matter from that premises.

In the past, such equipment that was imported into the United States from a region in which FMD exists has not been allowed entry into the United States without being first cleaned of dirt or other potentially contaminated matter at the port of arrival.

Although such cleaning has been effective to date in ensuring that FMD-contaminated equipment does not come into contact with U.S. livestock, it presents logistical problems that we have determined make it necessary to review such a practice. Many U.S. ports do not have facilities that allow large mechanized equipment to be cleaned in a way that ensures that soil and other particulate matter has been removed. Additionally, some ports are not constructed to allow for secure disposal of waste water and other cleaning materials.

Because of the recent increase in outbreaks of FMD in different parts of the world, we now consider it necessary to prohibit the importation of all used farm equipment into the United States from regions in which FMD exists unless the equipment meets the following conditions: (1) It has first been steam-cleaned free of exposed soil and other particulate matter in the exporting region; and (2) it is accompanied by an original certificate signed by an authorized official of the national animal health service of the region of origin stating that such cleaning has been done. Once the equipment arrives at the port of arrival, it must be inspected by an inspector of the Animal and Plant Health Inspection Service (APHIS) to confirm that it has been cleaned free of exposed soil and other particulate matter, or that the amount of any exposed soil and other particulate matter is so minimal that it can be safely removed at the port of arrival. We are adding these requirements to the regulations at a new § 94.1(c) and are redesignating the existing § 94.1(c) as § 94.1(d).

(*Please note:* The provisions we are adding at new § 94.1(c) refer to used farm equipment exported from regions listed in § 94.1(a) as those in which FMD or rinderpest exists. Although our concern in this interim rule involves regions in which FMD exists, not regions in which rinderpest exists, all the regions currently listed as those in which FMD or rinderpest exists are currently affected with FMD. Therefore, we are using the list in § 94.1(a) with regard to used farm equipment and FMD. If it should happen that a region becomes affected with rinderpest but not FMD, we will provide in the regulations that the restrictions on farm equipment do not apply to that region.)

We consider it necessary to require certification from the exporting region that such cleaning has been done, even though inspection will also be conducted in the United States, in order for APHIS to make the best use of its personnel resources. If used farm equipment arrives at a U.S. port without an original certificate signed by an authorized official of the national animal health service of the region of origin, APHIS inspectors will not inspect the equipment and will simply not allow it to be entered into the United States. If equipment arrives at a U.S. port with the required certification from the exporting region, but is found upon APHIS inspection to contain exposed soil or other particulate matter, it will also be refused entry, unless, in the judgment of the APHIS inspector, the amount of exposed soil is minimal enough to allow cleaning at the port of arrival, and there are adequate facilities and personnel at the port to conduct such cleaning without risk of spreading disease. Whether such cleaning can be carried out at the port of arrival will be determined by factors such as, but not limited to, the availability of space, cleaning equipment, and personnel, and the presence of adequate drainage and other means of ensuring that any material potentially contaminated with the FMD virus is safely disposed of.

*What Constitutes Farm Equipment?*

We are adding to § 94.0 of the regulations a definition of *farm equipment* to mean ''equipment used in the production of livestock or crops, including, but not limited to, mowers, harvesters, loaders, slaughter machinery, agricultural tractors, farm engines, farm trailers, farm carts, and farm wagons, but excluding automobiles and trucks.'' We are excluding automobiles and trucks from the definition of *farm equipment* because those vehicles are constructed in such a way that APHIS inspectors at the port of arrival can adequately clean them if necessary. The other types of equipment used on farms are more likely to contain parts and crevices from which soil and other particulate matter are not easily removed.

*How Will We Determine Farm Equipment Has Been Used?*

Whether farm equipment is considered used will be determined at the time of inspection at the port of arrival, and will be based on its physical appearance, its description in the equipment's carrier manifest, and any accompanying trade documentation, including, but not limited to, Customs entries, container markings, certificates, and commercial invoices.

**Emergency Action**

This rulemaking is necessary on an emergency basis to prevent the importation into the United States of dirty equipment that has been used on farms that may be affected with FMD. Because of the highly transmissible nature of the disease, such equipment poses an unacceptable risk of introducing the FMD virus into the United States. We are making this action effective retroactively to March 31, 2001, which is the date APHIS made effective a policy stating it had stopped issuing import permits for, and would prohibit the importation of, the materials covered by this interim rule. This effective date is necessary to ensure that articles contaminated with the FMD agent are not imported into the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. That document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

**Executive Order 12988**

This 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 retroactive effect to March 31, 2001; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0195 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 01–037–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 01–037–1 and send your comments within 60 days of publication of this rule.

This interim rule establishes regulations prohibiting the importation into the United States of used farm equipment from regions affected with FMD unless the equipment is accompanied by an original certificate, signed by an authorized official of the national animal health services of the exporting region, stating that the equipment has been steam-cleaned prior to export to the United States to remove all visible dirt and other particulate matter. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.20 hours per response.

*Respondents:* Exporters of used farm equipment in FMD-affected regions; veterinary authorities in FMD-affected regions.

*Estimated annual number of respondents:* 1,000.

*Estimated annual number of responses per respondent:* 10.

*Estimated annual number of responses:* 10,000.

*Estimated total annual burden on respondents:* 2,000 hours.

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**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.

2. In § 94.0, a new definition of *Farm equipment* is added, in alphabetical order, to read as follows:

**§ 94.0 Definitions**

* * * * *

*Farm equipment.* Equipment used in the production of livestock or crops, including, but not limited to, mowers, harvesters, loaders, slaughter machinery, agricultural tractors, farm

engines, farm trailers, farm carts, and farm wagons, but excluding automobiles and trucks.

3. Section 94.1 is amended as follows:

a. In paragraph (b)(2), by removing the words ''paragraph (c)'' and adding the words ''paragraph (d)'' in their place.

b. By redesignating paragraph (c) as paragraph (d).

c. By adding a new paragraph (c) to read as set forth below.

d. By revising the OMB control number citation at the end of the section to read as set forth below.

**§ 94.1 Regions where rinderpest or foot-and-mouth disease exists; importations prohibited.**

* * * * *

(c) The importation of any used farm equipment that originates in any region where rinderpest or foot-and-mouth disease exists, as designated in paragraph (a) of this section, is prohibited, unless the equipment is accompanied by an original certificate signed by an authorized official of the national animal health service of the exporting region that states that the equipment, after its last use and prior to export, was steam-cleaned free of all exposed dirt and other particulate matter. Such farm equipment is subject to APHIS inspection at the port of arrival. If it is found during such inspection to contain any exposed dirt or other particulate matter, it will be denied entry into the United States, unless, in the judgment of the APHIS inspector, the amount of exposed soil is minimal enough to allow cleaning at the port of arrival, and there are adequate facilities and personnel at the port to conduct such cleaning without risk of disease contamination.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579–0015 and 0579–0195)

Done in Washington, DC, this 7th day of May 2002.

**Peter Fernandez,**

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

[FR Doc. 02–11896 Filed 5–10–02; 8:45 am]

**BILLING CODE 3410–34–U**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

**RIN 3150–AG94**

### List of Approved Spent Fuel Storage Casks: NAC–MPC Revision; Confirmation of Effective Date

**AGENCY:** Nuclear Regulatory Commission.

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

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is confirming the effective date of May 29, 2002, for the direct final rule that appeared in the **Federal Register** of March 15, 2002 (67 FR 11566). This direct final rule amended the NRC's regulations by revising the NAC–MPC cask system listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 2 to Certificate of Compliance No. 1025. This document confirms the effective date.

**DATES:** The effective date of May 29, 2002 is confirmed for this direct final rule.

**ADDRESSES:** Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website *(http://ruleforum.llnl.gov).* For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219 (e-mail: *jmm2@nrc.gov*).

**SUPPLEMENTARY INFORMATION:** On March 15, 2002 (67 FR 11566), the NRC published in the **Federal Register** a direct final rule amending its regulations in part 72 by revising the NAC International Multi-Purpose Canister (NAC–MPC) cask system listing within the ''List of approved spent fuel storage casks'' to include Amendment 2 to Certificate of Compliance (CoC) No. 1025. This amendment allows for modification of the design of the cask system to accommodate a new type of fuel. The modifications include increased length of the fuel basket and canister, transfer cask, and vertical concrete cask. Changes also include a redesigned fuel basket to accommodate 26 fuel assemblies, with an alternate 24-fuel assembly configuration and increased transfer cask radial shielding. The CoC has been revised in its entirety to include a reference to the new type of fuel and a revised format. The Technical Specifications (TS) have also been revised in their entirety to include specifications for the new type of fuel, new operational limits, and to incorporate a revised format for the TS. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on May 29, 2002. The NRC did not receive any comments on the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 7th day of May, 2002.

For the Nuclear Regulatory Commission.

**Michael T. Lesar,**

*Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. 02–11874 Filed 5–10–02; 8:45 am]

**BILLING CODE 7590–01–P**

## FARM CREDIT ADMINISTRATION

### 12 CFR Parts 611 and 614

**RIN 3052–AB86**

### Organization; Loan Policies and Operations; Termination of Farm Credit Status; Effective Date

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of effective date.

**SUMMARY:** The Farm Credit Administration (FCA) published a final rule under parts 611 and 614 on April 12, 2002 (67 FR 17907). This final rule amends our regulations to allow a Farm Credit System (FCS or System) bank or association to terminate its FCS charter and become a financial institution under another Federal or State chartering authority. Our purpose is to amend the existing regulations so they apply to all System banks and associations and to make other changes. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 13, 2002.

**EFFECTIVE DATE:** The regulation amending 12 CFR parts 609 and 620 published on April 12, 2002 (67 FR 17907) is effective May 13, 2002.

**FOR FURTHER INFORMATION CONTACT:** Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm

Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434;
or
Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: May 8, 2002.

**Kelly Mikel Williams,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 02–11878 Filed 5–10–02; 8:45 am]

**BILLING CODE 6705–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–99–AD; Amendment 39–12731; AD 2002–08–19]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) Series Airplanes

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

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

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) series airplanes, that currently requires revising the Airplane Flight Manual to address uncommanded transfer of fuel between the wing fuel tanks and the center fuel tank; revising the Minimum Equipment List; limiting airplane operation; and increasing normal mission fuel requirements by 3,000 pounds. This amendment retains the requirements of the existing AD, and adds requirements for modification of the fuel distribution system for the center tank; and an inspection of that system for discrepancies, and corrective actions if necessary. This amendment is prompted by reports of uncommanded fuel transfer between wing fuel tanks and the center fuel tank, and reports of misaligned or damaged fuel tubes due to vibration. The actions specified in this AD are intended to ensure that the flight crew has the procedures necessary to address uncommanded fuel transfer; and to detect and correct discrepancies in the fuel distribution system, which could cause the center tank to overfill and fuel to leak from the center tank vent system or to become inaccessible, and could result in engine fuel starvation.

**DATES:** Effective May 28, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 28, 2002.

Comments for inclusion in the Rules Docket must be received on or before June 12, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–99–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–99–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C–3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** James Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:** On March 21, 2002, the FAA issued AD 2002–06–51, amendment 39–12688 (67 FR 14844, March 28, 2002), applicable to certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) series airplanes, to require revising the Airplane Flight Manual (AFM) to provide procedures for addressing uncommanded transfer of fuel from wing fuel tanks to the center fuel tank. That action also requires revising the Minimum Equipment List (MEL); limiting operation of the airplane to flight within 60 minutes of a suitable alternative airport; and ensuring that normal mission fuel requirements are increased by 3,000 pounds. That action was prompted by reports of uncommanded fuel transfer between the wing fuel tanks and the center fuel tank. The actions required by that AD are intended to ensure that the flight crew has the procedures necessary to address such uncommanded fuel transfer, which could cause the center tank to overfill, and fuel to leak from the center tank vent system or to become inaccessible, and result in engine fuel starvation.

### Actions Since Issuance of Previous Rule

Since the issuance of that AD, Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has advised the FAA that vibration and misalignment of fuel lines in the center fuel tank could cause damage to the fuel line couplings, and result in leakage of fuel within the center tank. Extensive fuel leakage within the center tank could result in an increase in unusable fuel and consequent engine fuel starvation.

### Explanation of Relevant Service Information

Bombardier has issued two alert service bulletins to provide increased reliability for the fuel system. The procedures included in these alert service bulletins are described as follows:

CRJ700 (Bombardier) Alert Service Bulletin A670BA–28–007, Revision B, dated March 18, 2002, specifies procedures for modifying the fuel distribution system for the center tank. Modification includes installing new brackets and attaching the ejectors with new P-clamps, replacing couplings (four in total) with new couplings, and relocating certain brackets.

CRJ700 (Bombardier) Alert Service Bulletin A670BA–28–005, Revision B, dated March 21, 2002, specifies procedures for inspection of the motive flow line and fuel feed line in the fuel distribution system for the center tank to detect discrepancies, and corrective actions if necessary. Discrepancies include misalignment, pre-loading, or damage to certain parts such as the fuel lines, couplings, boost pump canisters, check valves, ejectors, and P-clamps. Corrective actions include replacement of any part that exceeds the limit specified by the alert service bulletin, and proper alignment of parts.

TCCA issued Canadian airworthiness directive CF–2002–22, dated March 22, 2002, in order to ensure the continued

airworthiness of these airplanes in Canada.

**FAA's Conclusions**

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

**Explanation of Requirements of Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 2002–06–51 to continue to require revising the AFM to address uncommanded transfer of fuel from wing fuel tanks to center fuel tank; revising the MEL; limiting airplane operation; and increasing normal mission fuel requirements by 3,000 pounds. This AD adds requirements for modifying the fuel distribution system for the center tank; a one-time inspection of the motive flow line and fuel feed line in the fuel distribution system for discrepancies, and corrective actions if necessary. The actions are required to be accomplished per the alert service bulletins described previously, except as discussed below.

**Differences Between This AD and Canadian Airworthiness Directive**

Operators should note that the applicability of the Canadian airworthiness directive specifies serial numbers 10005 through 10039. However, this AD expands the applicability to include airplanes having serial numbers 10005 and subsequent. The FAA considers that such an expansion is necessary until a modification is developed by the manufacturer and approved by the FAA to address the identified unsafe condition and ensure continued operational safety of the fleet.

Operators also should note that, although the Canadian airworthiness directive specifies that the actions may be accomplished per the previously referenced alert service bulletins, ''or later revisions,'' this AD requires modification and inspection actions to be accomplished per specific alert service bulletins. The FAA points out that where a specific service bulletin is referenced in an AD, the use of the phrase, ''or later revisions,'' violates Office of the Federal Register regulations regarding approval of materials that are incorporated by reference.

**Difference Between This AD and Canadian Airworthiness Directive/Alert Service Bulletin**

Operators should note that, although the Canadian airworthiness directive and the applicable alert service bulletin specify a ''visual inspection,'' this AD specifies a ''detailed inspection.''

**Interim Action**

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

**Clarification of AD 2002–06–51**

Paragraph (a) of this AD has been revised to clarify the reference to AD 2002–06–51 by adding ''amendment 39–12688'' following the AD number.

Paragraph (d) of this AD has been revised to clarify the operational requirements cited in paragraph (d) of AD 2002–06–51.

**Determination of Rule's Effective Date**

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 shall 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.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the 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 rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–99–AD.'' The postcard will be date stamped and returned to the commenter.

**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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it 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, 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 39–12688 (67 FR 14844, March 28, 2002), and by adding a new airworthiness directive (AD), amendment 39–12731, to read as follows:

**2002–08–19 Bombardier, Inc. (Formerly Canadair):** Amendment 39–12731. Docket 2002–NM–99–AD. Supersedes AD 2002–06–51, Amendment 39–12688.

*Applicability:* Model CL–600–2C10 (Regional Jet Series 700 and 701) series airplanes, serial numbers 10005 and subsequent; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (k) 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 ensure that the flight crew has the procedures necessary to address uncommanded fuel transfer between the wing fuel tanks and the center fuel tank; and to detect and correct discrepancies in the fuel distribution system for the center tank, which could cause the center tank to overfill and fuel to leak from the center tank vent system or to become inaccessible, and could result in engine fuel starvation; accomplish the following:

**Restatement of Requirements of AD 2002–06–51**

**Revision of Airplane Flight Manual (AFM)**

(a) For airplanes having serial numbers 10005 through 10039: Within 2 days after April 2, 2002 (the effective date of AD 2002–06–51, amendment 39–12688), revise the Limitations and Abnormal Procedures sections of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to include the following information included in paragraphs (a)(1) and (a)(2) of this AD (this may be accomplished by inserting a copy of this AD into the AFM):

(1) Revise the ''Limitations—Power Plant,'' Paragraph 6, ''Fuel'' to include the following information, per Canadair Temporary Revision (TR) RJ 700/23–1, dated March 7, 2002:

''Dispatch with the fuel quantity gauging system inoperative is prohibited.''

(2) Revise the ''Abnormal Procedures—Fuel,'' Paragraph H, ''L or R Main Ejector'' to include the following information, per Canadair TR RJ 700/23–1, dated March 7, 2002:

''**H. L or R MAIN EJECTOR**

| | |
|---|---|
| (1) Left and right boost pumps | Confirm operating |
| (2) Affected engine instruments | Monitor |
| (3) Fuel tank quantity | Monitor and balance, if required |

**If centre tank quantity increases abnormally (by more than 227 kg (500 lb)):**

(4) Land at the nearest suitable airport.

**If centre tank quantity continues to increase (by more than 454 kg (1000 lb)):**

| | |
|---|---|
| (5) Affected engine thrust | IDLE |

(6) Consider shutting down affected engine to prevent centre tank transfer.

• Ensure both BOOST PUMPs are operating.

**If centre tank quantity further continues to increase (by more than 680 kg (1500 lb)):**

(7) Land immediately at the nearest suitable airport.''

**Revision of Minimum Equipment List (MEL)**

(b) For airplanes having serial numbers 10005 through 10039: Within 2 days after April 2, 2002, remove the relieving requirements specified in MEL CL–600–2C10 for the following items:

(1) Transfer Ejectors (Center Tank) (Ref. Master Minimum Equipment List (MMEL) Item 28–13–07).

(2) Fuel Transfer shutoff valves (SOV) (Center Tank) (Ref. MMEL Item 28–13–08).

(3) Xflow Pump (Ref. MMEL Item 28–13–10).

(4) Engine Indication and Crew Alerting System (EICAS) Fuel Tank Quantity Readouts (Left, Right, and Total) (Ref. MMEL Item 28–41–01).

(5) EICAS Center and Total Fuel Tank Quantity Readouts (Ref. MMEL Item 28–41–02).

(6) Fuel Computer Channels (Ref. MMEL Item 28–41–03).

**Operational Limitation**

(c) For airplanes having serial numbers 10005 through 10039: Within 2 days after April 2, 2002, revise the Limitations section of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to limit operation of the airplane to flight within 60 minutes of a suitable alternative airport. This action may be accomplished by inserting a copy of this AD into the Limitations section of the AFM.

**Operational Requirements**

(d) For airplanes having serial numbers 10005 through 10039: Within 2 days after April 2, 2002, revise the Limitations section of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to specify that, prior to each further flight, the normal mission fuel requirements are increased by 3,000 pounds. This action may be accomplished by inserting a copy of this AD into the Limitations section of the AFM.

**New Requirements of This AD**

**Revision of Airplane Flight Manual (AFM)**

(e) For airplanes other than those identified in paragraph (a) of this AD: Within 2 days after the effective date of this AD, revise the Limitations and Abnormal Procedures sections of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to include the following information included in paragraphs (e)(1) and (e)(2) of this AD (this may be accomplished by inserting a copy of this AD into the AFM):

(1) Revise the ''Limitations—Power Plant,'' Paragraph 6, ''Fuel'' to include the following information, per Canadair Temporary Revision (TR) RJ 700/23–1, dated March 7, 2002:

''Dispatch with the fuel quantity gauging system inoperative is prohibited.''

(2) Revise the ''Abnormal Procedures—Fuel,'' Paragraph H, ''L or R Main Ejector'' to include the following information, per Canadair TR RJ 700/23–1, dated March 7, 2002:

''**H. L or R MAIN EJECTOR**

| | |
|---|---|
| (1) Left and right boost pumps | Confirm operating |

(2) Affected engine instruments ..... Monitor
(3) Fuel tank quantity ..... Monitor and balance, if required
**If centre tank quantity increases abnormally (by more than 227 kg (500 lb)):**
(4) Land at the nearest suitable airport.
**If centre tank quantity continues to increase (by more than 454 kg (1000 lb)):**
(5) Affected engine thrust ..... IDLE
(6) Consider shutting down affected engine to prevent centre tank transfer.
• Ensure both BOOST PUMPs are operating.
**If centre tank quantity further continues to increase (by more than 680 kg (1500 lb)):**
(7) Land immediately at the nearest suitable airport.''

**Revision of Minimum Equipment List (MEL)**

(f) For airplanes other than those identified in paragraph (b) of this AD: Within 2 days after the effective date of this AD, remove the relieving requirements specified in MEL CL–600–2C10 for the following items.

(1) Transfer Ejectors (Center Tank) (Ref. Master Minimum Equipment List (MMEL) Item 28–13–07).

(2) Fuel Transfer shutoff valves (SOV) (Center Tank) (Ref. MMEL Item 28–13–08).

(3) Xflow Pump (Ref. MMEL Item 28–13–10).

(4) Engine Indication and Crew Alerting System (EICAS) Fuel Tank Quantity Readouts (Left, Right, and Total) (Ref. MMEL Item 28–41–01).

(5) EICAS Center and Total Fuel Tank Quantity Readouts (Ref. MMEL Item 28–41–02).

(6) Fuel Computer Channels (Ref. MMEL Item 28–41–03).

**Operational Limitation**

(g) For airplanes other than those identified in paragraph (c) of this AD: Within 2 days after the effective date of this AD, revise the Limitations section of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to limit operation of the airplane to flight within 60 minutes of a suitable alternative airport. This action may be accomplished by inserting a copy of this AD into the Limitations section of the AFM.

**Operational Requirements**

(h) For airplanes other than those identified in paragraph (d) of this AD: Within 2 days after the effective date of this AD, revise the Limitations section of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to specify that, prior to each further flight, the normal mission fuel requirements are increased by 3,000 pounds. This action may be accomplished by inserting a copy of this AD into the Limitations section of the AFM.

**Modification**

(i) For airplanes having serial numbers 10005 through 10039 inclusive: Within 200 flight hours after the effective date of this AD, modify the fuel distribution system for the center tank per CRJ700 (Bombardier) Alert Service Bulletin A670BA–28–007, Revision B, dated March 18, 2002.

(1) Install new brackets, part numbers (P/N) KBA670–62010–1 and P/N KBA670–62010–2; and attach ejectors with new P-clamps.

(2) Replace existing couplings (four in total), P/N B0305025A24, with new couplings, P/N B0305072–24DE.

(3) Relocate brackets, P/N CC670–62278–1 and P/N CC670–62278–2.

**Note 2:** Modifications accomplished prior to the effective date of this AD per CRJ700 (Bombardier) Alert Service Bulletin A670BA–28–007, original issue, dated March 12, 2002; or Revision A, dated March 15, 2002; are considered acceptable for compliance with the applicable action specified in this AD.

**Inspection and Corrective Actions**

(j) For airplanes having serial numbers 10005 and subsequent: Accomplish a one-time detailed inspection of the motive flow line and fuel feed line in the fuel distribution system for the center tank to detect any discrepancy (including misalignment, pre-loading, or damage) per CRJ700 (Bombardier) Alert Service Bulletin A670BA–28–005, Revision B, dated March 21, 2002, including Appendix A, dated February 8, 2002; at the time specified in paragraph (j)(1) or (j)(2) of this AD, as applicable. If any discrepancy is found, before further flight, replace any part that exceeds the limit in the alert service bulletin; and correct any misalignment of parts; per the alert service bulletin.

(1) For airplanes on which the detailed inspection required by paragraph (j) of this AD has been accomplished per CRJ700 (Bombardier) Alert Service Bulletin A670BA–28–005, original issue, dated February 8, 2002; or Revision A, dated March 12, 2002; prior to the effective date of this AD: Do the inspection within 400 flight hours after performing the most recent detailed inspection, or within 200 flight hours after the effective date of this AD, whichever occurs later.

(2) For airplanes other than those identified in paragraph (j)(1) of this AD: Do the inspection within 400 flight hours after the effective date of this AD.

**Note 3:** For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, *etc.,* may be used. Surface cleaning and elaborate access procedures may be required.''

**Alternative Methods of Compliance**

(k) 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, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

**Special Flight Permits**

(l) 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. The operational limitations and requirements of paragraphs (c) and (d) of this AD will be applicable to all special flight permits.

**Incorporation by Reference**

(m) Except as provided by paragraphs (a) through (h) of this AD, the actions shall be done in accordance with Canadair Temporary Revision RJ 700/23–1, dated March 7, 2002; CRJ700 (Bombardier) Alert Service Bulletin A670BA–28–005, Revision B, dated March 21, 2002, including Appendix A, dated February 8, 2002; and CRJ700 (Bombardier) Alert Service Bulletin A670BA–28–007, Revision B, dated March 18, 2002; as applicable. CRJ700 (Bombardier) Alert Service Bulletin A670BA–28–005, Revision B, dated March 21, 2002, contains the following list of effective pages:

| Page number | Revision level shown on page | Date shown on page |
|---|---|---|
| 1–36 | B | March 21, 2002. |
| **Appendix A** | | |
| A1, A2 | Original | February 8, 2002. |

(The manufacturer's name is indicated only on page 1 of the service bulletins; no other pages of these documents contain this information.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 5:** The subject of this AD is addressed in Canadian airworthiness directive CF–2002–22, dated March 22, 2002.

**Effective Date**

(n) This amendment becomes effective on May 28, 2002.

Issued in Renton, Washington, on May 7, 2002.

**Ali Bahrami,**

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

[FR Doc. 02–11942 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–105–AD; Amendment 39–12703; AD 2002–07–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F Series Airplanes

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects information in an existing airworthiness directive (AD that applies to certain Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes. That AD currently requires repetitive inspections to find cracking of the lower skin panel at the lower row of fasteners in certain lap joints of the fuselage, and repair, if necessary. This document corrects a typographical error in the supplemental type certificate (STC) number specified in paragraph (i) of that AD. This correction is necessary to ensure that the correct STC number is specified and operators of affected airplanes are advised of all applicable actions.

**DATES:** Effective May 17, 2002.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of May 17, 2002 (67 FR 17923, April 12, 2002).

**FOR FURTHER INFORMATION CONTACT:** Walt Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** On April 2, 2002, the Federal Aviation Administration (FAA) issued AD 2002–07–09, amendment 39–12703 (67 FR 17923, April 12, 2002), which applies to all Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes. That AD currently requires repetitive inspections to find cracking of the lower skin panel at the lower row of fasteners in certain lap joints of the fuselage, and repair, if necessary. That AD was prompted by the FAA's determination that, in light of additional crack findings, certain modifications of the fuselage lap joints are necessary. The actions required by that AD are intended to find and fix fatigue cracking of the fuselage lap joints, which could result in sudden fracture and failure of the lower skin lap joints, and rapid decompression of the airplane.

### Need for the Correction

The FAA notes that there is a typographical error in the STC number specified in paragraph (i) of the AD.

The FAA has determined that a correction to AD 2002–07–09 is necessary to correctly identify the STC number.

### Correction of Publication

This document corrects the error and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains May 17, 2002.

Since this action only corrects a typographical error, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Correction

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 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

**2002–07–09 Boeing:** Amendment 39–12703. Docket 99–NM–105–AD.

*Applicability:* Model 727 series airplanes, as listed in Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A, dated March 15, 2001, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (l)(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 find and fix fatigue cracking in the lower skin panel at the lower row of fasteners of the fuselage lap joints, which could result in sudden fracture and failure of the lap joints, and rapid decompression of the airplane; accomplish the following:

**Initial and Repetitive Inspections**

(a) Do either an external low frequency eddy current (LFEC) inspection to find cracking, or both internal detailed and medium frequency eddy current (MFEC) inspections to find cracking or corrosion, in the lower skin panels of the lower row of fasteners of the fuselage lap joints per Part I of the Accomplishment Instructions of Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A, dated March 15, 2001. Do the applicable inspection at the earlier of the times specified in paragraphs (a)(1) and (a)(2) of this AD on the lap joints identified in Tables A through H and J through N of Section 1.E., ''Compliance,'' of Paragraph 1, Planning Information, of the service bulletin. Except as provided by paragraph (b) of this AD, after doing the applicable initial inspection, repeat that inspection at the intervals specified in

Tables A through G or J through N of the service bulletin.

(1) At the latest of the times specified for the initial inspection in Tables A through H (for Groups 1, 2, 3, and 5 airplanes), or Tables J through N (for Groups 3 and 4 airplanes), as applicable, of Section 1.E., ''Compliance,'' of the service bulletin, except where the compliance time in the service bulletin specifies a compliance time interval based on ''the release of this service bulletin,'' this AD requires compliance within the interval specified in the service bulletin ''after the effective date of this AD.''

(2) Within 600 flight cycles after the last LFEC inspection or 7,000 flight cycles after the last MFEC inspection, if any, is accomplished in accordance with AD 99–04–22, amendment 39–11047.

**Note 2:** Groups 1–5 are defined in the effectivity section of the service bulletin.

**Note 3:** For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to find damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(b) For Model 727–200 series airplanes: The repetitive inspection intervals for lap joints identified in Table H of Section 1.E., ''Compliance,'' of Paragraph 1, Planning Information, of Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A, dated March 15, 2001, decrease with increasing flight cycles. Perform the repetitive inspections listed in Table H of the service bulletin at the thresholds and intervals specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD, as applicable.

**Note 4:** Table H of Boeing Service Bulletin 727–53A0222, Revision 1, has different inspection procedures for airplanes that have accumulated fewer than 35,000 total flight cycles, and airplanes that have accumulated 35,000 or more, but fewer than 45,000 total flight cycles.

(1) If, at the time of the most recent inspection required by paragraph (a) or (b) of this AD, the airplane has accumulated fewer than 35,000 total flight cycles: Perform LFEC inspections at intervals not to exceed 600 flight cycles, or detailed internal visual and MFEC inspections at intervals not to exceed 7,000 flight cycles.

(2) If, at the time of the most recent inspection required by paragraph (a) or (b) of this AD, the airplane has accumulated 35,000 or more, but fewer than 45,000 total flight cycles: Perform LFEC inspections at intervals not to exceed 600 flight cycles, or detailed internal visual and MFEC inspections at intervals not to exceed 7,000 flight cycles.

(3) If, at the time of the most recent inspection required by paragraph (a) or (b) of this AD, the airplane has accumulated 45,000 or more, but fewer than 55,000 total flight cycles: Perform detailed internal visual and MFEC inspections at intervals not to exceed 2,000 flight cycles.

(4) If, at the time of the most recent inspection required by paragraph (a) or (b) of this AD, the airplane has accumulated 55,000 or more total flight cycles: Perform LFEC inspections at intervals not to exceed 300-flight-cycle intervals.

**Note 5:** Inspections done prior to the effective date of this AD per Boeing Alert Service Bulletin 727–53A0222, dated July 27, 2000, are considered acceptable for compliance with the applicable action specified in this amendment.

**Compliance Plan**

(c) For airplanes on which the modification required by paragraph (d) of this AD has not been done as of the effective date of this AD: Within 3 months after the effective date of this AD, submit a plan to the FAA identifying a schedule for compliance with paragraph (d) of this AD. This schedule must include, for each of the operator's affected airplanes, the estimated dates when the required actions will be accomplished. For the purposes of this paragraph, ''FAA'' means the Principal Maintenance Inspector (PMI) for operators that are assigned a PMI, or the cognizant Flight Standards District Office for other operators. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

**Note 6:** Operators are not required to submit revisions to the compliance plan required by paragraph (c) of this AD to the FAA.

**Modification/Post-Modification Inspections**

(d) For Model 727–200 series airplanes: Do the modification listed in Table H of Section 1.E., ''Compliance,'' of Paragraph 1, Planning Information, of Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A, dated March 15, 2001; per Part II of the Accomplishment Instructions of the service bulletin, at the threshold specified in paragraph (d)(1), (d)(2), or (d)(3) of this AD, as applicable. Within 35,000 flight cycles after doing the modification, do the post-modification inspections for cracking in the skin, per Part III of the Accomplishment Instructions of the service bulletin. Accomplishment of this paragraph terminates the repetitive inspections required by paragraph (b) of this AD.

(1) For airplanes that have accumulated fewer than 35,000 total flight cycles on the effective date of the AD: Accomplish the modification prior to 48,000 total flight cycles.

(2) For airplanes that have accumulated 35,000 or more, but fewer than 55,000 total flight cycles on the effective date of the AD: Accomplish the modification prior to 55,000 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever is later.

(3) For airplanes that have accumulated 55,000 or more total flight cycles on the effective date of the AD: Accomplish the modification within 2,000 flight cycles after the effective date of this AD.

**Repair**

(e) If any cracking or corrosion is found during any inspection required by paragraph (a), (b), or (d) of this AD: Before further flight, repair per Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A, dated March 15, 2001. Where the service bulletin specifies to contact Boeing for repair instructions, 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 DER 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 approval letter must specifically reference this AD.

**Concurrent Modifications**

(f) For Model 727–200 series airplanes modified per supplemental type certificate (STC) SA1368SO or SA1797SO: Concurrent with the modification of the fuselage lap joints required by paragraph (d) of this AD, do the inspection for cracking of the lower row of fasteners in the lower skin of the lap joints, and the modification specified in Aeronautical Engineers Inc. Service Bulletin AEI 00–01, Revision A, dated May 7, 2001, per the service bulletin.

(g) For Model 727–200 series airplanes modified per STCs SA1444SO and SA1509SO: Concurrent with the modification of the fuselage lap joints required by paragraph (d) of this AD, do the inspection for cracking of the lower row of fasteners in the lower skin of the lap joints, and the modification specified in PEMCO Service Bulletin 727–53–0007, Revision 1, dated June 6, 2001, per the service bulletin.

(h) For Model 727–200 series airplanes modified per STC SA00015AT: Concurrent with the modification of the fuselage lap joints required by paragraph (d) of this AD, do the inspection for cracking of the lower row of fasteners in the lower skin of the lap joints, and the modification specified in Aircraft Technical Service, Inc., Service Bulletin ATS 727–001, dated May 7, 2001, per the service bulletin.

(i) For Model 727–200 series airplanes modified per STC SA1767SO: Concurrent with the modification of the fuselage lap joints required by paragraph (d) of this AD, do the inspection for cracking of the lower row of fasteners in the lower skin of the lap joints, and the modification specified in Federal Express Corporation Service Bulletin 00–029, Revision A, including Attachment A, dated May 16, 2001, per the service bulletin.

(j) Within 2,200 flight cycles after doing the applicable modification specified in paragraph (f), (g), (h), or (i) of this AD, do the post-modification inspection for cracking in the skin per the applicable service bulletin specified in Table 1, below. Repeat the applicable inspection after that at intervals not to exceed 2,200 flight cycles. Table 1 follows:

TABLE 1.—SERVICE BULLETINS

| Service bulletin | Date |
|---|---|
| Aeronautical Engineers Inc. Service Bulletin AEI 00–01, Revision A. | May 7, 2001. |
| Aircraft Technical Service, Inc., Service Bulletin ATS 727–001. | May 7, 2001. |
| Federal Express Corporation Service Bulletin 00–029, Revision A, including Attachment A. | May 16, 2001. |
| PEMCO Service Bulletin, 727–53–0007, Revision 1. | June 6, 2001. |

**Repair**

(k) If any cracking is found during any inspection required by paragraph (f), (g), (h), or (i) of this AD: Before further flight, repair per the applicable service bulletin as provided in Table 1 in paragraph (j) of this AD. Where cracks exceed the limits provided in the service bulletin, and the bulletin specifies to contact the provider of the service bulletin for repair instructions, prior to further flight, repair per a method approved by the Manager, Seattle ACO. If any cracking is found during any inspection required by paragraph (j) of this AD: Before further flight, repair per a method approved by the Manager, Seattle ACO. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

**Alternative Methods of Compliance**

(l)(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 PMI, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously per AD 99–04–22, amendment 39–11047, are approved as alternative methods of compliance with this AD.

**Note 7:** 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**

(m) 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**

(n) Except as provided by paragraphs (c), (e), and (k) of this AD, the actions shall be done in accordance with the following service bulletins, as applicable:

TABLE 2.—SERVICE BULLETINS

| Service bulletin | Date |
|---|---|
| Aeronautical Engineers Inc. Service Bulletin AEI 00–01, Revision A. | May 7, 2001. |
| Aircraft Technical Service, Inc., Service Bulletin ATS 727–001. | May 7, 2001. |
| Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A. | March 15, 2001. |
| Federal Express Corporation Service Bulletin 00–029, Revision A, including Attachment A. | May 16, 2001. |
| PEMCO Service Bulletin 727–53–0007, Revision 1. | June 6, 2001. |

This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of May 17, 2002 (67 FR 17923, April 12, 2002). 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**

(o) The effective date of this amendment remains May 17, 2002.

Issued in Renton, Washington, on May 6, 2002.

**Kalene C. Yanamura,**

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

[FR Doc. 02–11803 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–SW–20–AD; Amendment 39–12680; AD 2002–06–04]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N Helicopters; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects Airworthiness Directive (AD) 2002–06–04 for the specified Eurocopter France helicopters that was published in the **Federal Register** on March 20, 2002 (67 FR 12858). The effective date as stated in paragraph (f) of the AD is incorrect, and this document corrects that effective date. In all other respects, the original document remains the same.

**DATES:** Effective April 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** The FAA issued a final rule AD 2002–06–04 on March 11, 2002 (67 FR 12858, March 20, 2002) for the specified Eurocopter France helicopters. The following correction is needed:

The effective date given in paragraph (f) of the AD was intended to be the same effective date of April 24, 2002, as stated in the ''Effective Date'' line. Therefore, the date in paragraph (f) needs correcting.

Since no other part of the regulatory information has been revised, the final rule is not being republished.

**Correction of Publication**

Accordingly, the publication on March 20, 2002 of the final rule (AD 2002–06–04) which was the subject of FR Doc. 02–6626 is corrected as follows:

**§ 39.13 [Corrected]**

On page 12859, in the second column, in AD 2002–06–04, paragraph (f), correct ''April 4, 2002'' to read ''April 24, 2002''.

Issued in Fort Worth, Texas, on April 29, 2002.

**David A. Downey,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 02–11805 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–SW–46–AD; Amendment 39–12674; AD 2002–05–06]**

**RIN 2120–AA64**

## Airworthiness Directives; Sikorsky Aircraft Corporation Model S–76A Helicopters; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects an effective date in Airworthiness Directive (AD) 2002–05–06. That AD applies to Sikorsky Aircraft Corporation Model S–76A helicopters and was published in the **Federal Register** on March 18, 2002 (67 FR 11893). The effective date as stated in paragraph (g) of the AD is incorrect, and this document corrects that effective date. In all other respects, the original document remains the same.

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

**FOR FURTHER INFORMATION CONTACT:** Richard Noll, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7160, fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** The FAA issued a final rule AD 2002–05–06, on March 5, 2002 (67 FR 11893, March 18, 2002). The following correction is needed:

The effective date given in paragraph (g) of the AD was intended to be the same effective date of April 22, 2002 as stated in the ''Effective Date'' line. Therefore, the date in paragraph (g) needs correcting.

Since no other part of the regulatory information has been revised, the final rule is not being republished.

### Correction of the Publication

Accordingly, the publication on March 18, 2002 of the final rule (AD 2002–05–06) which was the subject of FR Doc. 02–6330 is corrected as follows:

**§ 39.13 [Corrected]**

On page 11895, in the second column, in AD 2002–05–06, paragraph (g), correct ''April 2, 2002'' to read ''April 22, 2002''.

Issued in Fort Worth, Texas, on April 29, 2002.

**David A. Downey,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 02–11806 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 02–AWP–2]**

## Establishment of Class D Surface Area at Indian Springs Air Force Auxiliary Field; Indian Springs, NV

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

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

**SUMMARY:** This document confirms the effective date of a direct final rule that establishes a Class D Surface Area at Indian Springs Air Force Auxiliary Field in Indian Springs, NV.

**EFFECTIVE DATE:** 0901 UTC March 21, 2002.

**FOR FURTHER INFORMATION CONTACT:** Jeri Carson, Air Traffic Division, Airspace Branch, AWP–520.11, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 725–6611.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on February 27, 2002 (67 FR 8859). The FAA uses the direct final rulemaking procedure for a non-controversial rule when FAA believes that there will be no adverse public comment. This direct final rule advised the public that adverse comments were not anticipated, and that unless written adverse comments or written notice of intent to submit such adverse comments, were received within the comment period, the regulation would become effective on March 21, 2002. No adverse comments were received. Thus, this action confirms the direct final rule will become effective on that date.

Issued in Los Angeles, California, on April 5, 2002.

**John Clancy,**

*Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 02–10500 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 01–ANM–19]**

## Establishment of Class E Airspace, St. George, UT

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at the surface at St. George Municipal Airport, St. George, UT. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at St. George Municipal Airport, St. George, UT.

**EFFECTIVE DATE:** 0901 UTC, August 8, 2002.

**FOR FURTHER INFORMATION CONTACT:** Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 01–ANM–19, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

**SUPPLEMENTARY INFORMATION:**

### History

On February 21, 2002, the FAA proposed to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing Class E surface area airspace at St. George, UT, in order to provide a safer IFR environment at St. George Municipal Airport, St. George, UT (67 FR 7980). This amendment provides additional Class E2 Surface Area controlled airspace at St. George, UT, to contain aircraft conducting instrument flight operations at St. George Municipal Airport. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

### The Rule

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) establishes Class E airspace at St. George, UT in order to provide adequate controlled airspace for IFR operations at St. George Municipal Airport, St. George, UT. This amendment establishes Class E2 Surface Area airspace at St. George, UT to enhance safety and efficiency of IFR flight operations in the St. George, UT terminal area. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. This rule is designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under IFR at the St. George Municipal Airport and between the terminal and en route transition stages.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for an airport, are published in Paragraph 6002, 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 designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

necessary to keep them operationally current. It, therefore, (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 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).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 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 14 CFR 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 6002 Class E airspace areas designated as surface areas for an airport.*

* * * * *

**ANM UT E2 St. George, UT [NEW]**

St. George Municipal Airport, UT
(Lat. 37°05′26″ N., long. 113°35′35″ W.)

Within a 4.5-mile radius of St. George Municipal Airport. This Class E airspace is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington on April 30, 2002.

**Charles E. Davis,**

*Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 02–11903 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 01–ANM–18]**

## Modification of Class E Airspace, Hailey, ID

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

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace at Friedman Memorial Airport, Hailey, ID. Newly developed Area Navigation (RNAV) Special Standard Instrument Approach Procedure (SIAP) at the Friedman Memorial Airport made this action necessary. Additional Class E 700-feet and 1,200-feet controlled airspace, above the surface of the earth is required to contain aircraft executing the RNAV Z RWY 31 Global Positioning System (GPS) 31R Special SIAP at Friedman Memorial Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Friedman Memorial Airport, Hailey, ID.

**EFFECTIVE DATE:** 0901 UTC, August 8, 2002.

**FOR FURTHER INFORMATION CONTACT:** Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 01–ANM–18, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

**SUPPLEMENTARY INFORMATION:**

**History**

On February 21, 2002, the FAA proposed to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Hailey, ID, in order to provide a safer IFR environment at Friedman Memorial Airport, Hailey, ID (67 FR 7981). This amendment provides additional Class E2 Surface Area controlled airspace at Hailey, ID to contain aircraft conducting instrument flight operations at Friedman Memorial Airport. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

**The Rule**

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) modifies Class E airspace at Hailey, ID, in order to provide adequate controlled airspace for IFR operations at Friedman Memorial Airport, Hailey, ID. This amendment modifies Class E 700 and 1,200 foot airspace at Hailey, ID, to enhance safety and efficiency of IFR flight operations in the Hailey, ID, terminal area. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. This rule is designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under IFR at the Friedman Memorial Airport and between the terminal and en route transition stages.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. 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 airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (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 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).

**Adoption of the Amendment**

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

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

1. The authority citation for 14 CFR 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.*

* * * * *

**ANM ID E5 Hailey, ID [REVISED]**

Friedman Memorial Airport, ID
(Lat. 43°30′14″ N., long, 114°17′45″ W.)

That airspace extending upward from 700-feet above the surface within a 5.5 mile radius of Friedman Memorial Airport, and within 2 miles each side of the 328° bearing from the airport extending from the 5.5 mile radius to 7.4 miles northwest of the airport, and within 2 miles each side of the 159° bearing from the airport extending from the 5.5 mile radius to 7.6 miles southeast of the airport; and that airspace extending upward from 1,200-feet above the surface, bounded by a line beginning at lat. 43°50′00″ N., long, 114°38′27″ W.; 43°50′00″ N., long, 114°00′00″ W.; to lat. 43°12′55″ N., long, 114°00′00″ W.; to lat. 43°12′55″ N., 114°38′27″ W.; thence to point of origin; excluding that airspace within Federal Airways and the Burley, ID, Class E airspace area.

* * * * *

Issued in Seattle, Washington on April 30, 2002.

**Charles E. Davis,**

*Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 02–11906 Filed 5–10–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF THE TREASURY

## Customs Service

## 19 CFR Part 24

**[T.D. 02–24]**

**RIN 1515–AC82**

## Amended Procedure for Refunds of Harbor Maintenance Fees Paid on Exports of Merchandise

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

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, with certain modifications, the content of interim amendments to the Customs Regulations which provide a new procedure for requesting refunds of export harbor maintenance fees. The new procedure simplifies the refund process by relieving exporters from documentary requirements in most cases and providing a 120-day period to allow exporters to seek additional refunds.

**EFFECTIVE DATE:** May 13, 2002.

**FOR FURTHER INFORMATION CONTACT:** Deborah Thompson, Revenue Branch, National Finance Center, (317) 298–1200 (ext. 4003).

**SUPPLEMENTARY INFORMATION:**

### Background

The harbor maintenance fee was created by the Water Resources Development Act of 1986 (Pub. L. 99–622; codified at 26 U.S.C. 4461 *et seq.*) (the Act) and is implemented by § 24.24 of the Customs Regulations (19 CFR 24.24). Imposition of the fee is intended to require those who benefit from the maintenance of U.S. ports and harbors to share in the cost of that maintenance. Pursuant to the Act and as implemented by the regulations, the harbor maintenance fee became effective on April 1, 1987, and is assessed based on 0.125 percent of the value of commercial cargo loaded or unloaded at certain identified ports or, in the case of passengers, on the value of the actual charge paid for the transportation. In 1998, the U.S. Supreme Court held the fee unconstitutional as applied to exports (*United States Shoe Corporation* v. *United States,* 118 S. Ct. 1290, No. 97–372 (March 31, 1998)). Until then, the fee had been assessed on port use associated with imports, exports, foreign trade zone admissions, passengers, and movements of cargo between domestic ports.

After the Supreme Court decision, by a notice published in the **Federal Register** (63 FR 24209) on May 1, 1998, Customs announced that, as of April 25, 1998, the harbor maintenance fee for cargo loaded on board a vessel for export would no longer be collected. On July 31, 1998, Customs published in the **Federal Register** (63 FR 40822) an amendment to § 24.24 of the Customs Regulations, removing the requirement that exporters loading cargo at ports subject to the harbor maintenance fee pay the fee. Thus, currently, application of the fee continues, as noted above, but only for imports, domestic shipments, foreign trade zone admissions, and passengers.

On August 28, 1998, the U.S. Court of International Trade (CIT) ordered an immediate refund of undisputed export fee payments to exporters who had filed complaints with the court (*United States Shoe Corporation* v. *United States,* No. 94–11–00668, slip op. 98–126 (C.I.T. Aug. 28, 1998)). The court's refund procedure applied to export fee payments received by Customs within two years of the date of the exporter's complaint, and refunds under this procedure were duly paid by Customs. On February 28, 2000, the U.S. Court of Appeals for the Federal Circuit (CAFC) acknowledged that the Customs Regulations did not then impose a limitation on the period within which a refund request may be filed (*Swisher International, Inc.* v. *U.S.,* 205 F. 3d 1358 (No. 99–1277 C.A.F.C. February 28, 2000) (cert. denied).) With this decision, all parties who had paid export fees became eligible to file a refund request for those fees regardless of when the fees were paid. This opened the entire period the export fee was in effect (April 1, 1987—April 25, 1998) to recovery of refunds under the administrative procedure set forth in the regulations.

*Recent Regulatory Activity Affecting Export Harbor Maintenance Fee Payments*

After publishing a notice of proposed rulemaking and considering the comments received, Customs, on July 2, 2001, published a final rule in the **Federal Register** (66 FR 34813) establishing a one year from time of payment time limit within which a refund request must be filed for overpayments of harbor maintenance fees that were paid on a quarterly basis. As Customs has not collected the fee on exports since April 25, 1998, this time limitation, when in effect, would have eliminated the opportunity for exporters to file any additional harbor maintenance fee refund requests. Thus, to ensure that all exporters had sufficient time and notice to file refund requests, the July 2, 2001, final rule provided that those who made quarterly payments on exports more than one year ago (in effect, all payers of these export fees) would have until December 31, 2001, to file refund requests. Customs notes that the December 31, 2001, filing deadline for refunds applied also to any other harbor maintenance fees paid on a quarterly basis that are more than a year old as of that date.

Before publication of the July 2, 2001, final rule, Customs published an interim regulation providing a simplified procedure for requesting refunds of export harbor maintenance fees. The interim regulation was published in the **Federal Register** (66 FR 16854) on March 28, 2001, and became effective on that date. A correction document to the interim regulation was published in the **Federal Register** (66 FR 21806) on April 27, 2001.

It is noted that the July 2, 2001, final rule setting the one year time limitation

for refunds of quarterly harbor maintenance fee payments incorporated the simplified refund procedure for export fee payments set forth in the interim regulation. However, it modified the structure of the interim regulation and deleted language in the interim regulation regarding the application of interest to refunds because the issue of interest was and remains subject to litigation.

Today's document is a final rule that adopts, with modifications, the content of the interim regulation as corrected by the April 27, 2001, correction document. It retains the structure of the July 2, 2001, final rule and continues to not mention whether interest is applicable to the refunds. The primary additional modifications to the interim regulation (additional to those that were included in the July 2, 2001, final rule) are that: (1) Customs, after receiving a refund request, will provide exporters a list of all payments Customs was able to identify from a search of its records; (2) all exporters filing refund requests will have an additional 120 days from Customs issuance of payment and certification reports to file a request for a Revised Report/Certification to make a refund claim for additional payments; (3) refund requests covering export fee payments made prior to July 1, 1990, will become subject to a power of attorney/authorization letter requirement (exporters or their agents can submit the authorization after the refund request is filed); (4) an exception to the power of attorney/authorization letter requirement will be introduced for freight forwarders; and (5) any agent (including a freight forwarder) that signs a Report/Certification or Revised Report/Certification on an exporter's behalf will certify that it will use due diligence to forward the refund to the exporter and will return to Customs any refund not forwarded to the exporter within one year of its receipt. These and other changes are discussed in the ''Discussion of Comments'', ''Other Changes'', and ''Conclusion'' sections of this document.

*Refund Filing Procedure Under the Interim Regulation and the July 2, 2001, Final Rule*

For Export Fee Payments Made on and After July 1, 1990

The interim regulation's refund procedure, which became effective on March 28, 2001 (the substance of which was incorporated into the July 2, 2001, final rule), provides that Customs, upon receipt of a request, will search its records for payments made on and after July 1, 1990, and include all payments that can be confirmed in a ''Harbor Maintenance Tax Payment Report and Certification'' (Report/Certification) that is issued to the exporter. If the exporter agrees that the Report/Certification is accurate, the exporter will sign and return it to Customs, thereby agreeing that the amount determined to be owed in the Report/Certification is in full accord and satisfaction of its export harbor maintenance fee claims. Customs then will issue the refund.

If an exporter disputes any payment listed in the Report/Certification (that is, the Report/Certification does not include a payment the exporter believes was made or includes one but not in the correct amount), the exporter must submit documentary proof to Customs to support its claim. After reviewing the submission, if any additional or corrected payments can be confirmed, Customs will issue a Revised Report/Certification listing all undisputed payments from the initially issued Report/Certification and adding the additional confirmed payments (including corrections). If Customs cannot confirm the additional payments/corrections, they will be denied a refund. The denial will be final, and the original Report/Certification will constitute the total refund.

To receive a refund, the exporter must sign and return to Customs the Report/Certification or the Revised Report/Certification, as the case may be.

For Export Fee Payments Made Prior to July 1, 1990

Regarding refund requests for payments made prior to July 1, 1990, the interim regulation (and the July 2, 2001, final rule) provides that proof of payment documentation for each payment must be submitted with the request. If the documentation relative to a payment is sufficient to confirm the payment, Customs will issue a refund. If the documentation relative to a payment is lacking or insufficient to confirm payment, the refund request for that payment will be denied. Upon denial, an exporter will have an additional 120 days to submit documentation or additional documentation proving payment. Customs will review the documentation and issue refunds for confirmed payments and deny refunds for payments that cannot be confirmed. Any denials will be final.

In the interim regulation, Customs explained that it is treating payments made prior to July 1, 1990, differently from payments made on or after that date because it possesses paper documentary proof of payment for payments made on or after July 1, 1990, but not before. Under the interim regulation's procedure, where Customs has paper documentation, it will not require exporters to submit proof of payment with their refund requests. However, Customs will require documentation for such payments where an exporter disputes the completeness or accuracy of a Report/Certification.

**Discussion of Comments**

Customs received comments from nine commenters on the interim regulation. The comments raised various issues, some of which have already been addressed by Customs in its July 2, 2001, final rule.

*Comment:* One commenter indicated that exporters may be disinclined to accept Customs invitation to withdraw Freedom of Information Act (FOIA) requests. (Customs made the suggestion in the ''Background'' text of the interim regulation in order to unclog the refund process that had been inundated with FOIA requests. Customs did so after pointing out that FOIA requests would be of no benefit to exporters for two reasons: (1) In most cases, proof of payment documents would not be required under the refund procedure for export fee payments made on and after July 1, 1990, and (2) Customs does not possess, and therefore cannot provide, proof of payment documents (paper documents) for payments made prior to July 1, 1990.) This commenter explained that filers of FOIA requests will not withdraw them because the records received from a FOIA request can be used to assist exporters in identifying the quarters in which a payment was made, as required under the interim regulation. Thus, this commenter recommended that the regulation be modified to remove the requirement that the quarters of payment be identified in a refund request for payments made on and after July 1, 1990; Customs could then search the entire post-June 30, 1990, period for payments.

*Customs response:* Customs appreciates the commenter's concern regarding FOIA requests and has reconsidered the refund procedure. To accommodate exporters who have requested documentation and to further simplify the process, Customs is modifying the refund procedure in this document.

As set forth in the regulatory text in this document, Customs, when processing a refund request, will perform a search of its records (paper documents and electronic database) and produce for issuance to the exporter two reports: the Report/Certification (also provided for under the interim

regulation) and the Harbor Maintenance Tax Payment Report (HMT Payment Report; not provided for under the interim regulation).

The Report/Certification lists all post-June 30, 1990, payments identified by Customs record search and any pre-July 1, 1990, payments supported by documentation submitted by the exporter with its refund request or afterward; it also sets forth the total amount of the refund owed the exporter. The HMT Payment Report lists all payments made by the exporter during the entire recovery period (April 1, 1987 through April 25, 1998), as identified by Customs record search. Customs believes that the HMT Payment Report should satisfy all exporters who filed FOIA requests, as it contains all payments that Customs can identify from all record sources.

Consequently, specifying quarters of payment in a refund request (or not doing so) will not determine which payments will be included in a Report/Certification (although the information may be helpful to Customs in its search). Exporters who could not identify quarters will benefit from Customs issuance of the HMT Payment Report, as it will provide them information they may need to locate evidence of payments should that evidence be needed to obtain a refund.

Also, Customs notes that under the modified procedure, upon receipt of the HMT Payment Report and the Report/Certification, the exporter will have 120 days to submit a request for a Revised Report/Certification, with supporting documentation, to establish any payments not listed in the Report/Certification. This provides an exporter with a second opportunity to submit required documentation to establish pre-July 1, 1990, payments and, as under the interim regulation procedure, gives exporters the opportunity to support with documentation additional post-June 30, 1990, payments not listed in a Report/Certification (as well as corrections of payments listed).

*Comment:* Several commenters contended that Customs could use its database to provide information to exporters relative to export fee payments made prior to July 1, 1990. The exporters could then use the provided data to search for records to support payments.

*Customs response:* Customs favors this recommendation, which is reflected in the modified procedure set forth in this document. Under the modified procedure, Customs will use the database (along with other paper document sources Customs possesses for payments made on or after July 1, 1990) to provide each requesting exporter a HMT Payment Report that lists all payments made during the entire recovery period. This report will provide exporters data they can use to search for that supporting documentation, just as the commenter recommended.

*Comment:* One commenter recommended that Customs search its database for pre-July 1, 1990, payments and treat them the same as post-July 1, 1990, payments, meaning that Customs would include them in the Report/Certification's refund calculation.

*Customs response:* Customs cannot agree to this recommendation. The modified procedure will provide the exporter the reports that list payments Customs identified in its record search, but exporters will be required to submit supporting documentation to obtain refunds for pre-July 1, 1990, payments. Customs records do not include paper documentation to support these payments, and Customs experience with older payments recorded in the database has shown that the database is unreliable. Customs therefore cannot rely exclusively on that record source to confirm export fee payments, and exporters will have to provide that documentation (if not with the refund request, as soon as possible thereafter) to receive refunds for pre-July 1, 1990, payments.

*Comment:* Two commenters objected to the interim regulation's requirement that only certain documents are acceptable as proof of payment for pre-July 1, 1990, payments. (The interim regulation provides that acceptable documentation may be either a copy of the Export Vessel Movement Summary Sheet or, where an Automated Summary Monthly Shipper's Export Declaration was filed, a letter containing certain information there specified.) These commenters contended that any documentation tending to support the payment should be acceptable, such as a cancelled check, a company payment ledger, or a Shipper's Export Declaration (SED).

*Customs response:* The interim regulation requires as proof of payment the documentation that, under the regulations, was required to be submitted with payment. In requiring that documentation to support a payment, Customs is demanding no more from exporters than the regulation always required for refunds and no more than the regulation still requires for refunds of other than export harbor maintenance fee payments. However, Customs appreciates the difficulty some exporters may have in locating these documents, particularly for older payments (the recovery period extends back to April of 1987). Therefore, Customs is modifying the regulation to provide that, in addition to the required documents, Customs will consider any documentation the exporter submits that tends to prove a payment, including, with respect to exporters whose only quarterly HMT payments were for exports, affidavits attesting to that fact.

Customs notes however that in reviewing documentation other than the required documentation, it will balance its obligation to issue refunds with its obligation to protect the revenue. Thus, while Customs will accommodate exporters by considering additional evidence of payment, it will only accept those documents as evidence of payment if the documentation clearly shows that the payments were made for export fees (as opposed to other harbor maintenance fees), in the amounts sought to be refunded, and by the party requesting the refund (or on whose behalf the refund is requested). The regulation is amended in this document accordingly.

Customs notes that the regulations did not require the CF 349 and the CF 350 until 1991. Thus, for a period of time after this 1991 regulation change, Customs also accepted with payment, and for proving payments for refund, the documentation that was required under the regulations prior to the 1991 change. Consequently, for issuing refunds now for payments made on and after July 1, 1990, Customs will accept as proof of payment, when required to be submitted, whichever type of document Customs accepted with the payment at the time it was made. That documentation was either the documentation required after the 1991 change or, at least for a time, the documentation required under the regulations prior to the 1991 change.

*Comment:* Two commenters objected to the interim regulation's statement, in the ''Background'' text of the document, regarding when a protest under 19 U.S.C. 1514 should be filed to challenge a denial of a refund request for a pre-July 1, 1990, payment. These commenters contended that the 90-day protest filing period should commence upon expiration of the 120-day refund request refiling period. (The interim regulation procedure provided that, for pre-July 1, 1990, payments, an exporter would have 120 days after a refund denial to submit additional documentation. The document pointed out, however, that if an exporter wanted to file a protest, it must do so within 90 days of the refund denial. This would mean that an exporter would have to file

a protest prior to the end of the 120-day period.)

*Customs response:* Under 19 U.S.C. 1514(c)(3), a protest must be filed within 90 days of the date of a Customs decision described in 19 U.S.C. 1514(a)(3) concerning charges or exactions under the customs laws, which includes a decision to deny a refund of export harbor maintenance fees. (See *Swisher International, Inc.* v. *United States,* 205 F. 3d 1358 (No. 99–1277 C.A.F.C. February 28, 2000)(cert. denied), which held that denial of a harbor maintenance fee refund request is protestable.) Based on this statutory requirement, the interim regulation document indicated that a protest must be filed within 90 days of the Customs decision to deny a refund.

However, the modified refund procedure, as set forth in this document, renders the concern of these commenters moot. Under the modified procedure, and in contrast to the procedure set forth in the interim regulation, under no circumstance does the 120-day period for filing documentation run concurrently with the statutory 90-day protest period. Under the modified procedure, the 90-day protest period begins to run either upon expiration of the 120-day period or issuance of a Revised Report/Certification if issued after the period's expiration.

*Comment:* Several commenters objected to Customs expression of intent, in the ''Background'' text of the interim regulation, to require that refund requests for export fee payments made more than a year ago be filed by the anticipated 30-day delayed effective date of the then not yet published July 2, 2001, final rule. These commenters recommended that Customs allow one year or 18 months from the date of publication of that anticipated final rule.

*Customs response:* Regarding the effective date of the July 2, 2001, final rule by which refund requests for export fee payments must be filed, Customs reconsidered the matter after publication of the interim regulation (partly in response to comments discussed in the final rule). Thus, in the July 2, 2001, final rule, Customs set forth a 180-day delayed effective date that would allow exporters plenty of time to file these refund requests, through December 31, 2001. Customs believes that this was a satisfactory resolution of the matter as it provided ample time to file refund requests (considering the period of time exporters had to do so prior to issuance of the July 2, 2001, final rule).

*Comment:* Several commenters objected to the interim regulation explicitly precluding application of interest to refunds of export harbor maintenance fees. Some of these commenters stated that interest should apply to these refunds and others stated that the regulation should not explicitly preclude application of interest while the issue is still being litigated.

*Customs response:* Customs does not agree that interest should apply to refunds of export harbor maintenance fees. As Customs pointed out in its comment responses published in the July 2, 2001, final rule, the U.S. Court of Appeals for the Federal Circuit ruled in *International Business Machines Corp.* v. *United States,* 201 F.3d 1367 (Fed. Cir. 2000), that exporters are not entitled to interest on the refund of these fees. Customs, however, does agree that the regulation should not mention interest while the matter is still subject to litigation. Consequently, Customs removed the language regarding interest from the regulation published in the July 2, 2001, final rule, and today's final rule document continues the omission.

Customs also notes that under § 24.24(e)(4)(ii)(B) of the interim regulation (and under the July 2, 2001, final rule), claims for recovery of interest are not included among the claims waived by the exporter. This is made explicit in the amendment published in this document (see § 24.24(e)(4)(iv)(B)(*5*)).

*Comment:* Several commenters objected to the interim regulation's requirement that a power of attorney or letter of authorization be submitted when an exporter is represented by an agent. The power of attorney or letter constitutes the exporter's authorization of an agent or representative to file a refund request, sign a Report/Certification or Revised Report/Certification, and/or receive a refund on its behalf.

*Customs response:* Customs notes that it was the exporter who was liable for the export fee and, as such, is the proper party entitled to receive a refund. Generally, where an agent claims to represent an exporter, Customs believes it is appropriate to require as evidence of the representation a properly executed and current power of attorney or letter of authorization executed by the exporter. This ensures that the agent requestor is properly authorized to request and receive the refund, and it protects both the Government and the exporter against the possibility of issuing a refund to the wrong party, issuing duplicate refunds to both the exporter and its agent, or issuing refunds to more than one agent claiming to represent the same exporter.

Thus, the general rule is that Customs will not process a refund request submitted by an agent on behalf of an exporter (by witholding issuance of the HMT Payment Report and the Report/Certification until an authorizing document is filed) unless a power of attorney or authorization letter signed by the exporter is submitted.

However, in reviewing this matter, Customs has recognized the special circumstance of freight forwarders who made export fee payments on behalf of many exporters at a time, in some cases, hundreds. Customs believes that this special circumstance warrants an exception to the general rule that is practical for Customs as well as the exporters represented by these agents.

To accommodate these agents and yet to ensure, as much as possible, that Customs does not inadvertently issue double refunds to an exporter who also files a refund request on its own behalf, Customs will process refund requests filed by freight forwarders without power of attorneys or authorization letters unless any exporter covered in the refund request has also filed a separate refund request on its own behalf. In that instance, the freight forwarder's entire refund request will be removed from the chronological processing order and processed later.

The exception to the power of attorney/authorization letter requirement for freight forwarders is added to § 24.24(e)(4)(iv)(B)(*1*) of this final rule. Minor conforming modifications are made in the amended regulation, as necessary.

Customs notes that while it always intended to process refund requests in the chronological order of receipt, the interim regulation did not make that explicit. This final rule amends the regulation to make it explicit (see § 24.24(e)(4)(iv)(B)(*1*)).

Where a power of attorney or authorization letter is submitted, whether or not required, it must be executed by an official of the exporting company who is authorized to legally bind the company.

Finally, Customs notes that under the interim regulation procedure, this requirement for a power of attorney or authorization letter only applied to refund requests for post-June 30, 1990, payments for which a Report/Certification would be issued. Refund requests covering payments made prior to July 1, 1990, did not require a power of attorney or authorization letter, as they were to be treated like a request for a refund of any other quarterly paid harbor maintenance fee (except that an

additional 120-day period to establish payments would apply) and a Report/Certification would not be issued. However, as the modified procedure treats payments made prior to and on or after July 1, 1990, the same with respect to issuance of a HMT Payment Report and a Report/Certification that must be signed by the exporter or its representative to receive a refund, the power of attorney/authorization letter requirement is no longer limited to refund requests covering post-June 30, 1990, payments. The regulation is modified accordingly in this document (§ 24.24(e)(4)(iv)(B)(*1*)).

*Comment:* One commenter recommended that Customs clarify that already-filed refund requests (filed before publication of the interim regulation) that were accompanied by documentation to prove payments made on or after July 1, 1990, will result in a Customs records search that is not limited to only the quarters covered by the documentation submitted. This commenter stated that an exporter should receive refunds for all post-June 30, 1990, payments made but will not if Customs does not search the entire period or the exporter does not refile its refund request identifying all possible quarters during which payments were (or could have been) made.

*Customs response:* Given the modified procedure set forth in this document, this commenter's concern is moot. Exporters, all of whom have already filed refund requests, will receive the HMT Payment Report that identifies all payments made by the exporter, as revealed by Customs record search. All post-June 30, 1990, payments that Customs can identify will be included in the HMT Payment Report and the Report/Certification whether or not the exporter's request specified quarters of payment. All payments, no matter when made, will be included in the HMT Payment Report.

*Comment:* Some commenters contended that Customs should convene a public meeting to discuss the amended refund process.

*Customs response:* Customs does not agree with this recommendation. As stated in its comment responses published in the July 2, 2001, final rule document, Customs believes that a public meeting regarding this subject is unnecessary and that the particular administrative (notice and comment) procedures being followed are sufficient to resolve the matter at issue.

*Comment:* One commenter recommended that Customs adopt a procedure to sever disputed claims from undisputed claims in a refund request to allow immediate payment of claims that can be verified while the exporter pursues a dispute involving claims that cannot be verified.

*Customs response:* A form of severability (of undisputed claims from disputed claims) is available under the modified procedure. Under the modified procedure, an exporter may sign and return to Customs a Report/Certification to receive the refund set forth in that report and also file a request for a Revised Report/Certification to seek refunds for additional payments not identified in the Report/Certification. The request for a Revised Report/Certification may be filed either contemporaneously with the filing of the signed Report/Certification or sometime later but within the 120-day period. Customs notes, however, that corrections of payments included in a signed Report/Certification cannot be pursued later because the exporter's signature on the report constitutes a full accord and satisfaction agreement with respect to all payments covered in that report.

In addition, an exporter may file another request for a Revised Report/Certification at any time during the 120-day period. This feature of the procedure allows an exporter to seek a refund for any later discovered payments and gives an exporter another chance to prove (with additional documentation) a payment that was not included in a refund previously issued by Customs.

Finally, after expiration of the 120-day period, an exporter may file a protest covering any payments not refunded by Customs. This provides another opportunity to sever disputed from undisputed refund claims, though later in the process.

*Comment:* One commenter recommended that a time limit be imposed on Customs processing of refund requests to require that Customs process at least 500 claims per month.

*Customs response:* Customs disagrees that a monthly processing requirement is necessary. However, Customs agrees that the expeditious processing of claims should be given a high priority. Toward that end, the modified procedure provides that Customs will endeavor to issue a Revised Report/Certification within 60 days of receiving a request for a revised report with supporting documentation. Also, for exporters whose payments are confined to the post-June 30, 1990, period and who do not dispute the payments listed and the refund set forth in a Report/Certification, refunds will be issued soon after Customs receipt of a signed Report/Certification. The sooner the exporter signs and returns it to Customs, the sooner Customs will issue the refund. Customs believes that the timetable set up in the modified procedure adequately addresses this commenter's concern.

**Other Changes**

After further consideration of the interim regulation's refund procedure, Customs determined that other changes were warranted (additional to those discussed in the comment responses above). One change involves the exporter's waiver (release, waiver, and abandonment) of claims against the Government (its officers, agents, and assigns for costs, attorney fees, expenses, compensatory damages, and exemplary damages, excluding interest), and another change involves the exporter's full accord and satisfaction agreement. The interim regulation (as well as the July 2, 2001, final rule) provides that the waiver and the full accord and satisfaction agreement apply to all export fee payments made by the exporter, whether or not addressed in a report. In contrast, under the modified procedure set forth in this document, an exporter's signature on a Report/Certification or a Revised Report/Certification represents a waiver and a full accord and satisfaction agreement relative only to the payments approved for refund in the report.

Another change is the Government's waiver of claims (excluding fraud claims) against the exporter (its employees, etc.) which in this document, like the exporter's waiver, is limited to claims arising out of payments covered in a signed report. Under the interim regulation, the Government's waiver was broad, covering all export fee payments whether or not covered in a report.

Another change has to do with the certification made by an agent, including a freight forwarder, that signs a Report/Certification or Revised Report/Certification on an exporter's behalf. Customs, in determining that the freight forwarder exception to the power of attorney/authorization letter requirement is warranted (discussed in the ''Comments'' section), recognized that any agent should be accountable for the proper distribution of refunds issued by Customs that are intended for exporters covered in the agent's refund request. Thus, Customs is adding to the regulation (§ 24.24(e)(4)(iv)(B)(*5*)) a provision that requires any agent, when signing a Report/Certification or Revised Report/Certification and accepting refunds on behalf of exporters, to certify that it will use due diligence to forward the refund to the exporters it represents, and will return a refund to Customs,

within one year of receipt, if it does not forward it to the exporter.

Another change in the regulation is to add language indicating that refund requests will be processed in the chronological order of receipt (see § 24.24(e)(4)(iv)(B)(*1*)) . Customs always intended to process refund requests in this way, but the regulation was silent in this regard.

Finally, a change concerning the address for submitting requests for refunds of harbor maintenance fees paid on a quarterly basis (found in § 24.24(e)(4)(i) of the interim regulation) is made in this document (in §§ 24.24(e)(4)(i) and (iv)(A)). The change reflects the correct zip code; however, as noted previously, this change was reflected in the July 2, 2001, final rule and was made in a notice of correction document published in the **Federal Register** on April 27, 2001.

**Conclusion**

After analysis of the comments and further review and consideration of the matter, Customs has determined to adopt as final the content of the interim amendments published in the **Federal Register** (66 FR 16854) on March 28, 2001, with the changes discussed above in this document and set forth in the amended regulatory text below.

In summary, these changes relate to: (1) That part of the procedure relative to Customs issuance of refunds after receiving a refund request, including the issuance of a HMT Payment Report; (2) the processing of refund requests in chronological order; (3) the requirement that a power of attorney or authorization letter be submitted to Customs prior to issuance of a HMT Payment Report and Report/Certification for any refund request (as opposed to only requests covering post-June 30, 1990, payments) submitted on the exporter's behalf by an agent other than a freight forwarder; (4) an exception to the power of attorney/authorization letter requirement applicable to freight forwarders and it's effect on the chronological processing of refunds filed by freight forwarders; (5) a requirement that any agent (including a freight forwarder) that signs a Report/Certification or Revised Report/Certification on an exporter's behalf must certify that it will use due diligence to forward the refund to the exporter and will return to Customs any refund not forwarded to the exporter within one year of its receipt; (6) the exporter's waiver (release and abandonment) of claims and its agreement of full accord and satisfaction; (7) the Government's waiver of claims against the exporter; (8) the address for mailing refund requests for export harbor maintenance fees; and (9) the matter of interest on refunds of export harbor maintenance fees. Customs notes that the latter two changes were reflected in the July 2, 2001, final rule.

Customs emphasizes that the instant final rule's modification of the interim regulation's refund-filing procedure will not prejudice exporters who filed refund requests in accordance with that procedure. The modified procedure is simpler and more accommodating to exporters than the interim regulation's procedure, and all filers will benefit equally from its implementation. Customs notes that as all refund requests have been filed prior to publication of this document, any modification to the procedure will not affect any exporter's actual filing of the request. The modifications made in this document affect the part of the procedure that commences after Customs receives a refund request.

Finally, Customs notes that this document amends only § 24.24(e)(4)(iv). The remaining paragraphs of § 24.24(e)(4) remain as published in the July 2, 2001, final rule (which became effective after the interim regulation and thereby replaced the interim regulation).

**Inapplicability of Delayed Effective Date**

Pursuant to 5 U.S.C. 553(d)(3), Customs has determined that a delayed effective date for this final rule is unnecessary. This document adopts, with some modifications, the content of an interim regulation previously published in the **Federal Register** (66 FR 34813) and made effective on March 28, 2001. The several changes made with publication of this document are to the benefit of the exporters who are required to follow the procedure set forth in the already effective interim regulation. For that reason, the effective date of this final rule document should not be delayed.

**Executive Order 12866**

This document does not meet the criteria for a Asignificant regulatory action'' as specified in E.O. 12866.

**Paperwork Reduction Act**

The collection of information contained in this final rule has previously been reviewed and approved by the Office of Management and Budget (OMB) under OMB control number 1515–0158. Additional information requested in the final rule relates to usual and customary business information/records. This rule does not include any substantive changes to the existing approved information collection. 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 control number.

**Regulatory Flexibility Act**

Because no notice of proposed rulemaking was required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. However, because this amendment to the regulations merely simplifies, to the benefit of exporters, a procedure for applying for and receiving refunds of export harbor maintenance fees that is already provided for under an existing regulation, it will not have a significant economic impact on a substantial number of small entities.

**Drafting Information**

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices contributed in its development.

**List of Subjects in 19 CFR Part 24**

Accounting, Claims, Customs duties and inspection, Fees, Financial and accounting procedures, Imports, Taxes, User fees.

**Amendments to the Regulations**

For the reasons stated in the preamble, under the authority of 19 U.S.C. 66 and 1624, the content of the interim rule amending 19 CFR part 24 that was published at 66 FR 16854 on March 28, 2001, is adopted as a final rule, with changes, to read as follows:

## PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for part 24 is amended to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

* * * * *

2. Section 24.24 is amended by revising paragraph (e)(4)(iv) to read as follows:

**§ 24.24 Harbor maintenance fee.**

* * * * *

(e) *Collections, supplemental payments, and refunds—** * *

(4) * * *

(iv) *For fees paid on export movements.* Customs will process refund requests relative to fee payments previously made regarding the loading of cargo for export as follows:

(A) *Refund request.* For export fee payments made prior to July 1, 1990, the

exporter (the name that appears on the SED or equivalent documentation authorized under 15 CFR 30.39(b)) or its agent must submit a letter of request for a refund specifying the grounds for the refund and identifying the specific payments made. The letter must be accompanied by the proof of payment set forth in paragraph (e)(4)(iv)(C) of this section. For export fee payments made on or after July 1, 1990, supporting documentation is not required with the refund request. For these payments, the request must specify the grounds for the refund, identify the quarters for which a refund is sought, and contain the following additional information: the exporter's name, address, and employer identification number (EIN); the name and EIN of any freight forwarder or other agent that made export fee payments on the exporter's behalf; and a name, telephone number, and facsimile number of a contact person.

(B) *Refund procedure*—(*1*) *Processing order; power of attorney.* Generally, a properly filed refund request will be processed in the chronological order of its receipt. A refund request filed on behalf of an exporter by an agent other than a freight forwarder must be supported by a power of attorney or letter signed by the exporter authorizing the representation. A refund request filed by an agent other than a freight forwarder that lacks a power of attorney or authorization letter will not be processed unless one or the other is submitted. A refund request filed by a freight forwarder does not require a power of attorney or authorization letter to be processed; however, if Customs has not received a power of attorney or authorization letter for an exporter covered in a freight forwarder's refund request and that exporter has filed a separate refund request on its own behalf, that freight forwarder's entire refund request will be removed from the chronological processing order and processed after the processing of all exporter refund requests is completed.

(*2*) *HMT Payment Report and Report/Certification.* In processing a request for a refund, Customs will conduct a search of its records (Customs electronic database and paper document sources) and produce for issuance to the exporter (or its agent, as appropriate) a ''Harbor Mantenance Tax Payment Report'' (HMT Payment Report) that lists all payments reflected in those records for the entire period the fee was in effect. Customs will also produce for issuance to the exporter a ''Harbor Maintenance Tax Refund Report and Certification'' (Report/Certification) that lists all payments supported by paper documentation, either retained by Customs (relative to payments made on and after July 1, 1990) or submitted by the exporter with its refund request (relative to payments made at any time the fee was in effect). Where a refund request was filed on the exporter's behalf by an agent other than a freight forwarder, a power of attorney or authorization letter must be filed with Customs before Customs will issue these reports. The Report/Certification sets forth the total amount of the refund that Customs believes it owes the exporter for the payments listed in that report (minus any previous refunds). Pre-July 1, 1990, payments listed in the HMT Payment Report for which paper documentation has not been provided by the exporter will not be listed in the Report/Certification. The exporter has 120 days from the date the HMT Payment Report and the Report/Certification are issued (the 120-day period) to sign and return to Customs the Report/Certification in order to receive the refund set forth in that report and/or to submit to Customs a request for a Revised Report/Certification. Where the exporter chooses to receive the refund set forth in the Report/Certification, the exporter must sign and return the report to Customs. Customs will issue the refund upon receipt of the signed report.

(*3*) *Revised Report/Certification.* A request for a Revised Report/Certification must be accompanied by documentation to support any payments not listed in the Report/Certification or corrections to listed payments. See paragraph (e)(4)(iv)(C) of this section regarding acceptable documentation. If an exporter (or its agent, as appropriate) both signs and returns to Customs a Report/Certification and requests a Revised Report/Certification, Customs will not, when reviewing the request for a Revised Report/Certification, approve for refund any corrections to the payments that were listed in the signed Report/Certification; Customs will, however, in that circumstance, consider approving any additional payments that were not listed in the signed Report/Certification. If an exporter does not sign and return to Customs a Report/Certification, but requests a Revised Report/Certification, Customs will consider approving for refund corrections to the payments listed in the Report/Certification and additional payments. Where the exporter requests a Revised Report/Certification, Customs will review the documentation submitted with the request, make a determination, and, within 60 days of the request's receipt, issue a Revised Report/Certification that lists all payments approved for refund and the total amount of the refund owed. In order to receive the refund set forth in a Revised Report/Certification, the exporter must sign and return it to Customs. Customs will issue the refund upon its receipt of the signed report. An exporter, within the 120-day period, may submit additional requests for a Revised Report/Certification, with appropriate documentation, to cover any payments not approved for refund in a Revised Report/Certification previously issued by Customs.

(*4*) *Protest.* For purposes of filing a protest under 19 U.S.C. 1514 (and 19 CFR part 174), unless issuance of a Revised Report/Certification is pending, any payments not approved for refund in a Report/Certification or a Revised Report/Certification issued by Customs within the 120-day period will be considered denied as of the date the period expires; a protest covering such payments must be filed within 90 days of that date. For any payments not approved for refund in a Revised Report/Certification issued after expiration of the 120-day period, a protest may be filed within 90 days of that report's issuance.

(*5*) *Significance of signed Report/Certification and Revised Report/Certification.* A Report/Certification or Revised Report/Certification must be signed by an officer of the company duly authorized to bind the company or by an agent (such as a broker or freight forwarder) representing the exporter in seeking a refund under this section. A Report/Certification or Revised Report/Certification signed by the exporter or its agent and received by Customs constitutes the exporter's agreement that the amount of the refund set forth in the report is accurate and Customs payment of that refund amount is in full accord and satisfaction of all payments approved for refund in the report. The signed Report/Certification or Revised Report/Certification also represents the exporter's release, waiver, and abandonment of all claims, excluding claims for interest, against the Government, its officers, agents, and assigns for costs, attorney fees, expenses, compensatory damages, and exemplary damages arising out of the payments approved for refund in the report. When an agent, including a freight forwarder, signs a Report/Certification or Revised Report/Certification on behalf of an exporter(s), the agent certifies that it is acting on the exporter's behalf and will use due diligence to forward the refund to the exporter, and, in the event the agent does not forward the refund to the exporter, will notify Customs and return

the refund to Customs within one year of its receipt of the refund. Upon receipt of the signed Report/Certification or Revised Report/Certification, Customs releases, waives, and abandons all claims other than fraud against the exporter, its officers, agents, or employees arising out of all payments approved for refund in the report.

(C) *Documentation.* For payments made prior to July 1, 1990, supporting documentation is required to obtain a refund and must be submitted in accordance with paragraphs (e)(4)(iv)(A) and/or (B)(*3*) of this section. For payments made on and after July 1, 1990, supporting documentation is not required to obtain a refund, unless the exporter seeks to prove corrections of payments listed in the Report/Certification (if the exporter did not sign and return it to Customs) and/or additional payments not listed in a Report/Certification, in accordance with paragraph (e)(4)(iv)(B)(*3*) of this section. The supporting documentation that Customs will accept as establishing entitlement to a refund, whether submitted with a refund request or a request for a Revised Report/Certification, is whichever of the following documents Customs accepted with the payment at the time it was made: a copy of the Export Vessel Movement Summary Sheet; where an Automated Summary Monthly Shipper's Export Declaration was filed, a copy of a letter containing the exporter's identification, its employer identification number (EIN), the Census Bureau reporting symbol, and, the quarter for which the payment was made; or a copy of a Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, for the quarter covering the refund requested. Customs also will consider other documentation offered as proof of payment of the fee, such as cancelled checks and/or affidavits from exporters attesting to the fact that all quarterly harbor maintenance tax payments made by the exporter were made exclusively for exports, and will accept that other documentation as establishing entitlement for a refund only if it clearly proves the payments were made for export harbor maintenance fees in the amounts sought to be refunded and were made by the party requesting the refund or the party on whose behalf the refund was requested.

* * * * *

**Robert C. Bonner,**

*Commissioner of Customs.*

Approved: May 8, 2002.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 02–11835 Filed 5–10–02; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 8985]**

**RIN 1545–AY02**

## Hedging Transactions; Corrections

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

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains corrections to final regulations that were published in the **Federal Register** on Wednesday, March 20, 2002 (67 FR 12863) relating to the character of gain or loss from hedging transactions.

**DATES:** This correction is effective March 20, 2002.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Handler (202) 622–3930 or Viva Hammer (202) 622–0869 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

The final regulations that are the subject of these corrections are under section 1221 of the Internal Revenue Code.

### Need for Correction

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

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Correction of Publication

Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendments:

## PART 1—INCOME TAXES

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

**Authority:** 26 U.S.C. 7805 * * *

**§ 1.446–4 [Corrected]**

2. Section 1.446–4, paragraph (d)(3) is amended by removing the language ''§ 1.1221–2(a)(4)(i)'' from the last sentence and adding the language ''§ 1.1221–2(a)(4)'' in its place.

**§ 1.1256(e)–1 [Corrected]**

3. Section 1.1256(e)–1, paragraph (c) is amended by removing the language ''(f)(1)(ii)'' from the second sentence and adding the language ''(g)(1)(ii)'' in its place.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).*

[FR Doc. 02–11793 Filed 5–10–02; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[COTP Los Angeles-Long Beach 02–009]**

**RIN 2115–AA97**

## Security Zones; Cruise Ships, San Pedro Bay, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing moving and fixed security zones around cruise ships located on San Pedro Bay, California, near and in the ports of Los Angeles and Long Beach. These actions are necessary to ensure public safety and prevent sabotage or terrorist acts against these vessels. Persons and vessels are prohibited from entering these security zones without permission of the Captain of the Port.

**DATES:** This rule is effective from 11:59 p.m. PDT on May 1, 2002 to 11:59 p.m. PST on December 1, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket COTP Los Angeles-Long Beach 02–009 and are available for inspection or copying at Coast Guard Marine Safety Office Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Rob Griffiths, Chief of Waterways Management Division, at (310) 732–2020.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the terrorist attacks on September 11, 2001 and the warnings given by national security and intelligence officials, there is an increased risk that further subversive or terrorist activity may be launched against the United States. A heightened level of security has been established around all cruise ships near the ports of Los Angeles and Long Beach. These security zones are needed to protect the United States and more specifically the people, waterways, and properties near San Pedro Bay.

In addition, the Coast Guard is currently working on an NPRM, for this temporary rule to become a final rule, which will soon be published. Therefore, the public will still have the opportunity to comment on this rule. This current temporary final rule's sole purpose is to continue a similar temporary final rule that began enforcement on November 1, 2001, recently following the attacks, and expires May 1, 2002. In this case, doing a NPRM will be repetitious in nature and since delay is inherent in the NPRM process, any delay in the effective date of this rule, is contrary to the public interest insofar as it may render individuals and facilities within and adjacent to cruise ships vulnerable to subversive activity, sabotage or terrorist attack. The measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to cruise ships. Immediate action is required to accomplish these objectives and necessary to continue safeguarding these vessels and the surrounding area. Any delay in the effective date of this rule is impractical and contrary to the public interest.

For the reasons stated in the paragraphs above under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

**Background and Purpose**

On September 11, 2001, terrorists launched attacks on commercial and public structures—the World Trade Center in New York and the Pentagon in Arlington, Virginia—killing large numbers of people and damaging properties of national significance. There is an increased risk that further subversive or terrorist activity may be launched against the United States based on warnings given by national security and intelligence officials. The Federal Bureau of Investigation (FBI) issued warnings on October 11, 2001 and February 11, 2002 concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan have made it prudent for important facilities and vessels to be on a higher state of alert because Osama Bin Ladin and his Al Qaeda organization, and other similar organizations, have publicly declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

These heightened security concerns, together with the catastrophic impact that a terrorist attack against a cruise ship would have to the public interest, makes these security zones prudent on the navigable waterways of the United States. To mitigate the risk of terrorist actions, the Coast Guard has increased safety and security measures on the navigable waterways of San Pedro Bay by establishing security zones around cruise ships. Vessels operating near cruise ships present possible platforms from which individuals may gain unauthorized access to these vessels or launch terrorist attacks upon these vessels or adjacent population centers. As a result, the Coast Guard is taking measures to prevent vessels or persons from accessing the navigable waters close to cruise ships on San Pedro Bay.

On January 18, 2002, we published a temporary final rule for cruise ships entitled ''Security Zones; Port of Los Angeles and Catalina Island'' in the **Federal Register** (67 FR 2571) under § 165.T11–058. It has been in effect since 11:59 PST on November 1, 2001 and is set to expire 11:59 p.m. PDT on May 1, 2002. As of today, the need for security zones around cruise ships still exist. This new temporary final rule will begin 11:59 p.m. PDT on May 1, 2002, the exact time the previous cruise ship security zone was in effect, and is set to expire 11:59 p.m. PST December 1, 2002. This will allow the Coast Guard time to publish a notice of proposed rulemaking (NPRM) in the **Federal Register**, which will include a public comment period, and for a final rule to be published and put into effect without there being an interruption in the protection provided by cruise ship security zones.

This new rule differs slightly from temporary section 165.T11–058 in a few ways. First, this temporary rule extends only the security zones in San Pedro Bay. Second, the security zones will be in effect around cruise ships in the Port of Long Beach as well as the Port of Los Angeles. Third, while underway in San Pedro Bay, the security zone will be 200 yards ahead, and 100 yards on each side and astern of the cruise ship which is needed due to the cruise ship's speed of advance through the water. Fourth, while implicit in the prior temporary rule, the security zones here will be described as extending from the water's surface to the sea floor. This more specific description is intended to discourage unidentified scuba divers and swimmers from coming within close proximity of a cruise ship. Fifth, the security zone around cruise ships that are underway or anchored on San Pedro Bay was broadened from only the port of Los Angeles inside the Los Angeles ''sea buoy'' to include all waters on San Pedro Bay within three nautical miles of the Federal breakwaters. Lastly, to clarify to which types of passenger vessels the rule applies, we have defined ''cruise ship'' to coincide with the description in 33 CFR 120.100.

**Discussion of Rule**

This regulation establishes a security zone in the waters of San Pedro Bay around all cruise ships that are anchored, moored, or underway within the Los Angeles or Long Beach port area. This security zone will take effect upon entry of any cruise ship into the waters from within three nautical miles outside the Federal breakwaters encompassing San Pedro Bay and will remain in effect until that vessel departs the three nautical mile limit. The following areas are security zones:

(1) All waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is anchored at a designated anchorage either inside the Federal breakwaters bounding San Pedro Bay or outside at designated anchorages within three nautical miles of the Federal breakwaters;

(2) The shore area and all waters extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is moored, or in the process of mooring, at any berth within the Los Angeles or Long Beach port areas inside the Federal breakwaters bounding San Pedro Bay; and

(3) All waters, extending from the surface to the sea floor within 200 yards ahead, and 100 yards on each side and astern of a cruise ship that is underway on the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within three nautical miles seaward of the Federal breakwater.

These security zones are needed for national security reasons to protect cruise ships, the public, transiting

vessels, adjacent waterfront facilities, and the ports from potential subversive acts, accidents, or other events of a similar nature. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port or his designated representative. Vessels already moored or anchored when these security zones take effect are not required to get underway to avoid either the moving or fixed zones unless specifically ordered to do so by the Captain of the Port or his designated representative.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended the Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. This authority, under section 7 of the PWSA (33 U.S.C. 1226), supplements the Coast Guard's authority to issue security zones under The Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including Subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: Seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979) because these zones will encompass a small portion of the waterway for a limited period of time. Delays, if any, are expected to be less than 30 minutes in duration. Vessels and persons may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the same reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

We expect this rule will affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in a small portion of the ports of Los Angeles or Long Beach near a cruise ship that are covered by these security zones. The impact to these entities would not, however, be significant since these security zones will encompass a small portion of the waterway for a limited period of time. Delays, if any, are expected to be less than thirty minutes in duration.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provision or operations for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

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

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

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

**Environment**

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are establishing security zones. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

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

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

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

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

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

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

2. Add new temporary § 165.T11–065 to read as follows:

**§ 165.T11–065 Security Zones; Cruise ships, San Pedro Bay, California.**

(a) *Definition.* ''Cruise ship'' as used in this section means a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire; making voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked or disembarked in the Port of Los Angeles or Port of Long Beach. It does not apply to ferries that hold Coast Guard Certificates of Inspection endorsed for ''Lakes, Bays, and Sounds'', and that transit international waters for only short periods of time, on frequent schedules.

(b) *Location.* The following areas are security zones:

(1) All waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is anchored at a designated anchorage either inside the Federal breakwaters bounding San Pedro Bay or outside at designated anchorages within three nautical miles of the Federal breakwaters;

(2) The shore area and all waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is moored, or is in the process of mooring, at any berth within the Los Angeles or Long Beach port areas inside the Federal breakwaters bounding San Pedro Bay; and

(3) All waters, extending from the surface to the sea floor, within 200 yards ahead, and 100 yards on each side and astern of a cruise ship that is underway either on the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within three nautical miles seaward of the Federal breakwaters.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Los Angeles-Long Beach, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 1–800–221–8724 or on VHF-FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by the Los Angeles Port Police and the Long Beach Police Department.

(f) *Effective period.* This section is effective from 11:59 p.m. PDT on May 1, 2002 through 11:59 p.m. PST on December 1, 2002.

Dated: May 1, 2002.

**J.M. Holmes,**

*Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.*

[FR Doc. 02–11917 Filed 5–10–02; 8:45 am]

**BILLING CODE 4910–15–U**

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[LANT AREA–02–001]**

**RIN 2115–AG33**

## Protection of Naval Vessels

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing regulations for the safety and security of U.S. naval vessels in the navigable waters of the United States. Naval vessel protection zones will provide for the regulation of vessel traffic in the vicinity of many U.S. naval vessels in the navigable waters of the United States.

**DATES:** This rule is effective beginning June 15, 2002.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket LANTAREA 02–001 and are available for inspection or copying at Commander (Amr), Coast Guard Atlantic Area, 431 Crawford Street, Portsmouth, VA 23704–5004 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Commander Chris Doane, Commander (Amr), Coast Guard Atlantic Area, 431 Crawford Street, Portsmouth, VA 23704–5004; telephone number (757) 398–6372.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On September 21, 2001, the Coast Guard published a temporary final rule entitled ''Protection of Naval Vessels'' in the **Federal Register** (66 FR 48779). The temporary final rule continues until June 15, 2002.

On February 21, 2002, we published a notice of proposed rulemaking (NPRM) entitled ''Protection of Naval Vessels'' in the **Federal Register** (67 FR 7992). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

**Background and Purpose**

These zones are necessary to provide for the safety and security of United States naval vessels in the navigable waters of the United States. The regulations are issued under the authority contained in 14 U.S.C. 91. Prior to issuing the temporary final rule on September 21, 2001, no regulation existed implementing 14 U.S.C. 91.

We determined that a continuing need existed for the protection of naval vessels. Therefore, we are establishing a final rule that will replace the temporary rule.

The temporary final rule continues until June 15, 2002. The permanent final rule becomes effective June 15, 2002.

**Discussion of Comments and Changes**

We received no comments on the proposed rule. Therefore, we have made no changes and plan to implement the provisions of the proposed rule as written.

**Regulatory Evaluation**

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

Although this regulation restricts access to the regulated area, the effect of this regulation will not be significant because: (i) individual naval vessel protection zones are limited in size; (ii) the Coast Guard, senior naval officer present in command, or official patrol may authorize access to the naval vessel protection zone; (iii) the naval vessel protection zone for any given transiting naval vessel will only effect a given geographical location for a limited time; and (iv) when conditions permit, the Coast Guard, senior naval officer present in command, or the official patrol should give advance notice of all naval vessel movements on VHF–FM channel 16 so mariners can adjust their plans accordingly.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate near or anchor in the vicinity of U.S. naval vessels in the navigable waters of the United States.

This regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual naval vessel protection zones are limited in size; (ii) the official patrol may authorize access to the naval vessel protection zone; (iii) the naval vessel protection zone for any given transiting naval vessel will only affect a given geographic location for a limited time; and (iv) when conditions permit, the Coast Guard, senior naval officer present in command, or the official patrol should give advance notice of all naval vessel movements on VHF–FM channel 16 so mariners can adjust their plans accordingly.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

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

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

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

**Environment**

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection and copying where indicated under **ADDRESSES.**

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

Harbors, Marine safety, Navigation (water), Protection of naval vessels, Reporting and recordkeeping requirements, Security measures, Waterways.

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

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

1. The authority citation for part 165 subpart G reads as follows:

**Authority:** 14 U.S.C. 91 and 633; 49 CFR 1.45.

2. Subpart G is added to part 165 to read as follows:

**Subpart G—Protection of Naval Vessels**

Sec.



## Subpart G—Protection of Naval Vessels

### § 165.2010 Purpose.

This subpart establishes the geographic parameters of naval vessel protection zones surrounding U.S. naval vessels in the navigable waters of the United States. This subpart also establishes when the U.S. Navy will take enforcement action in accordance with the statutory guidelines of 14 U.S.C. 91. Nothing in the rules and regulations contained in this subpart shall relieve any vessel, including U.S. naval vessels, from the observance of the Navigation Rules. The rules and regulations contained in this subpart supplement, but do not replace or supercede, any other regulation pertaining to the safety or security of U.S. naval vessels.

### § 165.2015 Definitions.

The following definitions apply to this subpart:

*Atlantic Area* means that area described in 33 CFR 3.04–1 Atlantic Area.

*Large U.S. naval vessel* means any U.S. naval vessel greater than 100 feet in length overall.

*Naval defensive sea area* means those areas described in 32 CFR part 761.

*Naval vessel protection zone* is a 500-yard regulated area of water surrounding large U.S. naval vessels that is necessary to provide for the safety or security of these U.S. naval vessels.

*Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.

*Navigation rules* means the Navigation Rules, International-Inland.

*Official patrol* means those personnel designated and supervised by a senior naval officer present in command and tasked to monitor a naval vessel protection zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone, and take other actions authorized by the U.S. Navy.

*Pacific Area* means that area described in 33 CFR 3.04–3 Pacific Area.

*Restricted area* means those areas established by the Army Corps of Engineers and set out in 33 CFR part 334.

*Senior naval officer present in command* is, unless otherwise designated by competent authority, the senior line officer of the U.S. Navy on active duty, eligible for command at sea, who is present and in command of any part of the Department of Navy in the area.

*U.S. naval vessel* means any vessel owned, operated, chartered, or leased by the U.S. Navy; any pre-commissioned vessel under construction for the U.S. Navy, once launched into the water; and any vessel under the operational control of the U.S. Navy or a Combatant Command.

*Vessel* means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, except U.S. Coast Guard or U.S. naval vessels.

### § 165.2020 Enforcement authority.

(a) *Coast Guard.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules and regulations contained in this subpart.

(b) *Senior naval officer present in command.* In the navigable waters of the United States, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to exercise effective control in the vicinity of large U.S. naval vessels, the senior naval officer present in command is responsible for the enforcement of the rules and regulations contained in this subpart to ensure the safety and security of all large naval vessels present. In meeting this responsibility, the senior naval officer present in command may directly assist any Coast Guard enforcement personnel who are present.

### § 165.2025 Atlantic Area.

(a) This section applies to any vessel or person in the navigable waters of the United States within the boundaries of the U.S. Coast Guard Atlantic Area, which includes the First, Fifth, Seventh, Eighth and Ninth U.S. Coast Guard Districts.

**Note to § 165.2025 paragraph (a):** The boundaries of the U.S. Coast Guard Atlantic Area and the First, Fifth, Seventh, Eighth and Ninth U.S. Coast Guard Districts are set out in 33 CFR part 3.

(b) A naval vessel protection zone exists around U.S. naval vessels greater than 100 feet in length overall at all times in the navigable waters of the United States, whether the large U.S. naval vessel is underway, anchored, moored, or within a floating drydock, except when the large naval vessel is moored or anchored within a restricted area or within a naval defensive sea area.

(c) The Navigation Rules shall apply at all times within a naval vessel protection zone.

(d) When within a naval vessel protection zone, all vessels shall operate at the minimum speed necessary to maintain a safe course, unless required to maintain speed by the Navigation Rules, and shall proceed as directed by the Coast Guard, the senior naval officer present in command, or the official patrol. When within a naval vessel protection zone, no vessel or person is allowed within 100 yards of a large U.S. naval vessel unless authorized by the Coast Guard, the senior naval officer present in command, or official patrol.

(e) To request authorization to operate within 100 yards of a large U.S. naval vessel, contact the Coast Guard, the senior naval officer present in command, or the official patrol on VHF-FM channel 16.

(f) When conditions permit, the Coast Guard, senior naval officer present in command, or the official patrol should:

(1) Give advance notice on VHF-FM channel 16 of all large U.S. naval vessel movements; and

(2) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of a large U.S. naval vessel in order to ensure a safe passage in accordance with the Navigation Rules; and

(3) Permit commercial vessels anchored in a designated anchorage area to remain at anchor when within 100 yards of passing large U.S. naval vessels; and

(4) Permit vessels that must transit via a navigable channel or waterway to pass within 100 yards of a moored or anchored large U.S. naval vessel with minimal delay consistent with security.

**Note to § 165.2025 paragraph (f):** The listed actions are discretionary and do not create any additional right to appeal or otherwise dispute a decision of the Coast Guard, the senior naval officer present in command, or the official patrol.

Dated: April 26, 2002.

**Thad W. Allen,**

*Vice Admiral, U.S. Coast Guard, Commander, Atlantic Area.*

[FR Doc. 02–11919 Filed 5–10–02; 8:45 am]

**BILLING CODE 4910–15–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Parts 1220, 1222 and 1228

**RIN 3095–AB02**

### Records Disposition

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Final rule.

**SUMMARY:** NARA is revising the records management regulations in Subchapter B to simplify certain records disposition procedures. The current rule addresses only hard copy distribution of agency records disposition manuals. This rule reflects agencies' use of the Internet and Intranets to distribute copies of agency records manuals that include the disposition authorities approved by NARA. The rule also eliminates the requirement that agencies request authority for a retention period that differs from the General Records Schedules if NARA previously has granted a disposition authority specifically to an agency. NARA is also correcting references in parts 1220, 1222, and 1228. This final rule will affect Federal agencies.

**EFFECTIVE DATE:** June 12, 2002.

**FOR FURTHER INFORMATION CONTACT:** Nancy Allard on 301–837–1850 or fax number 301–837–0319.

**SUPPLEMENTARY INFORMATION:** The proposed rule was published in the July 17, 2001, **Federal Register** (66 FR 37202) for a 60-day public comment period. NARA notified Federal records officers of the availability of the proposed rule. A copy of the proposed rule was also posted on the NARA web site.

NARA received 14 responses to the proposed rule, 12 from Federal agencies and two from private sector commenters. Six agencies and the two non-Federal commenters concurred with both changes. Comments from six agencies on the proposed rule related mainly to the clarity of the requirements and the format of the electronic copies of schedules submitted to NARA. Comments on each of the sections of the regulation are summarized below, followed by NARA's response.

**36 CFR 1228.42**

*Comment:* One agency recommended that NARA eliminate the requirement to submit a schedule for any deviation from GRS authorities.

*NARA response:* We did not adopt this comment. Application of the GRS is mandatory unless NARA has approved an alternate disposition. NARA has the statutory responsibility to approve all records disposition authorities, including those on agency-specific schedules and those contained in the GRS. See 44 U.S.C. 3303a.

**36 CFR 1228.42(b)**

*Comments:* Under the new rule, agencies need to notify NARA when they intend to apply a previously approved agency schedule instead of a newly-approved or newly-revised GRS. One agency suggested that it would be easier for agencies to notify NARA when they are not going to continue using the agency schedule rather than when they intend to continue to apply it. Another agency recommended that NARA add a time limit of 60–90 days for agencies to notify NARA that they intend to continue using their schedules. That agency also asked how NARA would determine which GRS items need be applied ''without exception.''

*NARA response:* The GRS, as the later authority, would normally supersede the agency schedule, so agencies need to tell NARA when they do not choose to apply the GRS. The rule has been modified to require notification within 90 days from issuance of the GRS change. GRS items that must be used without exception will be those that have a retention period based on another statutory or regulatory requirement. For example, retention periods for such records as accountable officers accounts and contracts are based on the statute of limitations on claims. A shorter retention period than provided in the law would deny an agency the ability to defend itself against claims, and a longer retention period may put the Government in jeopardy of processing untimely claims. NARA will identify such items clearly on the GRS Transmittal and in the disposition instruction for the applicable item.

**36 CFR 1228.42(c)**

*Comment:* One agency commented that NARA needs to process schedules for exceptions to the GRS more quickly, including shortening the 45-day review period on pending schedules listed in **Federal Register** notices to 14 days.

*NARA response:* We did not adopt this comment. NARA is concerned about the time required to approve many of the schedules submitted by agencies, and has undertaken a review of the scheduling process. NARA will consider, as part of this review, whether the Federal Register notice period should be modified. Public notice on pending schedules is required by law (44 U.S.C. 3303a(a)), and the current review period provides reasonable accommodation. In the meantime, NARA appraisal archivists work with agencies to set priorities for schedule processing.

**36 CFR 1228.50(a)(4)**

*Comments:* One agency asked for clarification of the requirement that agencies submit copies of schedules to NARA within 30 days as it relates to the provision in 36 CFR 1228.50(a)(4)(ii) that agencies submit a copy to NARA

when posted. That agency also recommended that NARA provide links to printed schedules of all agencies. Another agency suggested that the regulation specify that if the agency both prints and posts an electronic copy of its schedule, it need only submit an electronic copy to NARA.

*NARA response:* The provisions of 36 CFR 1228.50(a)(4) apply to both subordinate paragraphs ((a)(4)(i) and (a)(4)(ii)). Therefore, agencies are required to submit printed directives, schedules, and schedule changes within 30 days of the date they were issued, and a printed or electronic copy of the materials on an Internet or Intranet web site within 30 days of the date they were posted. Agencies may email electronic copies of schedules to NARA at the email address now indicated in the rule. The NARA records management web site includes the Agency Records Disposition Online Resource (http://ardor.nara.gov/index.html) which contains agency schedules or links to agency schedules, and the GRS. NARA urges agencies to provide information on their schedules to add to this resource. NARA agrees that agencies may submit only electronic copies of schedules if they both post an electronic copy and print copies for distribution. This change has been made.

**36 CFR 1228.50(a)(4)(ii)**

*Comments:* Three agencies raised questions about the format of the electronic copy of the records schedule that agencies would send to NARA. One agency asked whether the term meant the method of transmission, e.g., via email, instead of the format of the document itself. That agency also asked if the requirement to provide the Internet address for relevant schedules could be met if the address (URL) is on the electronic copy submitted to NARA. Another agency believed that the ''format specified by NARA'' referred to the requirement for transfer of permanent records in 36 CFR 1228.270, because it requested that HTML and PDF be acceptable as well as ASCII. A third agency commented that NARA should be able to accept all formats. Another agency recommended that the regulation specify that any revisions to schedules also be covered by the requirement to submit copies of schedules to NARA.

*NARA response:* The regulation relates to the format of the directives, schedules, and schedule changes, not the method of transmission for either the schedules or the transfer of permanent electronic text records to NARA. NARA will accept the schedules in all formats that it is able to read and disseminate, *e.g.,* Word, WordPerfect, HTML, RTF (rich text format), and PDF. If the copy of a schedule posted on a publicly available web site is submitted to NARA and includes the URL, the requirement to provide the Internet address would be met. However, inclusion of the URL for schedules posted on an agency's internal Intranet is not required because an agency's Intranet is not available to either NARA or the public. The regulation clearly states that agencies are to submit ''changes to all manuals as they are issued.'' NARA believes that the requirement is sufficiently clear.

**Other Changes in This Final Rule**

After publication of the proposed rule, the General Services Administration (GSA) updated its records management regulations. Cross-references to specific sections of GSA's records management regulations in title 41, Code of Federal Regulations, have been changed in this rule.

This rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies. This rule has no federalism or tribalism implications. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

**List of Subjects in 36 CFR Part 1228**

Archives and records, Federal buildings and facilities.

For the reasons set forth in the preamble, NARA amends parts 1220, 1222, and 1228 of title 36, Code of Federal Regulations, as follows:

## PART 1220—FEDERAL RECORDS; GENERAL

1. The authority citation for part 1220 continues to read as follows:

**Authority:** 44 U.S.C. 2104(a) and chs. 29 and 33.

**§ 1220.2 [Amended]**

2. In § 1220.2, remove the term ''41 CFR chapter 201, Subchapters A and B'' and add in its place the term ''41 CFR part 102–193.''

**§ 1220.34 [Amended]**

3. In § 1220.34, remove the term ''41 CFR part 201–9'' and add in its place the term ''41 CFR part 102–193.''

**§ 1220.36 [Amended]**

4. In paragraph (c) of § 1220.36, remove the term ''41 CFR part 101–11'' and add in its place the term ''41 CFR part 102–193.''

## PART 1222—CREATION AND MAINTENANCE OF FEDERAL RECORDS

5. The authority citation for part 1222 continues to read as follows:

**Authority:** 44 U.S.C. 2904, 3101, and 3102.

**§ 1222.20 [Amended]**

6. In paragraph (a) of § 1222.20, remove ''41 CFR Chapter 201'' and add ''41 CFR part 102–193.''

## PART 1228—DISPOSITION OF FEDERAL RECORDS

7. The authority citation for part 1228 continues to read as follows:

**Authority:** 44 U.S.C. chs. 21, 29, and 33.

8. Revise § 1228.40 to read as follows:

**§ 1228.40 Authority.**

The Archivist of the United States issues schedules authorizing disposal, after specified periods of time, of temporary records common to several or all agencies of the U.S. Government. General Records Schedules authorize the destruction of records after the stated retention period expires. Application of the disposition instructions in these schedules is mandatory (44 U.S.C. 3303a), provided an agency has not already received disposition authority from NARA.

9. Amend § 1228.42 by redesignating paragraph (c) as paragraph (d); revising paragraphs (a) and (b); and adding new paragraph (c) to read as follows:

**§ 1228.42 Applicability.**

(a) Agencies must apply GRS authorizations except as provided in paragraphs (b) or (c) of this section. Agencies must not include on SFs 115 records covered by the GRS unless a different retention period is requested, as specified in paragraph (c) of this section.

(b) Agencies may apply either the disposition instructions in a new or revised GRS or the disposition instructions previously approved by NARA in an agency schedule for the same series or system of records, unless NARA indicates that the new GRS disposition instruction must be applied without exception. The authority chosen by the agency must be applied on an agency-wide basis. The agency must notify NARA within 90 days of the date of the GRS change if it intends to continue using the agency schedule.

(c) Except as provided in paragraph (b) of this section, agencies that wish a different retention period must request an exception to the GRS by submitting an SF 115 in accordance with § 1228.30 accompanied by a written justification for the different retention period.

* * * * *

10. Revise § 1228.50(a)(4) to read as follows:

**§ 1228.50 Application of schedules.**

* * * * *

(a) * * *

(4) Agencies must submit to the National Archives and Records Administration (NWML) copies of published records schedules and all directives and other issuances relating to records disposition, within 30 days of implementation or internal dissemination, as specified below. If an agency both prints copies for distribution and posts an electronic copy, it should follow the instructions in paragraph (a)(4)(ii) of this section.

(i) Agencies that print these materials for internal distribution must forward to NARA (NWML), 8601 Adelphi Rd., College Park, MD 20740–6001, three copies of each final directive or other issuance relating to records disposition and 20 copies of all published records schedules (printed agency manuals) and changes to all manuals as they are issued.

(ii) Agencies that make these materials available via the Internet or internally on an Intranet web site or by other electronic means must submit one printed or electronic copy, in a format specified by NARA, to NARA (NWML) when the directive or manual is posted or distributed. Electronic mail messages transmitting copies of agency schedules as electronic attachments may be sent to *records.mgt@nara.gov.* These submissions must specify the name, title, agency, address, and telephone number of the submitter. If the records schedule is posted on a publicly available web site, the agency must also provide the Internet address (URL).

* * * * *

Dated: February 11, 2002.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 02–11577 Filed 5–10–02; 8:45 am]

**BILLING CODE 7515–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[MN63–01–7288a; FRL–7165–7]**

## Approval and Promulgation of Implementation Plans; Minnesota

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

**ACTION:** Direct final rule.

**SUMMARY:** We are approving a revision to the Minnesota State Implementation Plan (SIP) which updates Minnesota's performance test rule in the SIP. The Minnesota Pollution Control Agency (MPCA) submitted the proposed revision to EPA on December 16, 1998. The proposed revisions set out the procedures for facilities that are required to conduct performance tests to demonstrate compliance with their emission limits and/or operating requirements. The request is approvable because it satisfies the requirements of the Clean Air Act (Act). The rationale for the approval and other information are provided in this notice.

**DATES:** This direct final rule will be effective July 12, 2002, unless EPA receives adverse comment by June 12, 2002. If EPA receives adverse comments, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Written comments may be mailed to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.)

**FOR FURTHER INFORMATION CONTACT:** Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

**SUPPLEMENTARY INFORMATION:** This supplemental information section is organized as follows:



### I. General Information

*1. What Action Is EPA Taking Today?*

In this action, EPA is approving into the Minnesota SIP a revision to the SIP that MPCA submitted on December 16, 1998 which updates the Minnesota performance test rule. The Minnesota performance test rule was originally approved into the SIP on May 6, 1982 (47 FR 19520). Specifically, EPA is approving into the SIP Minnesota Rules 7017.2001 through 2060, removing from the SIP Minn. R. 7017.2000, and amending in the SIP Minn. R. 7011.0010, 7011.0105, 7011.0510, 7011.0515, 7011.0610, 7011.0710, 7011.0805, 7011.1305, 7011.1405, and 7011.1410.

*2. Why Is EPA Taking this Action?*

EPA is taking this action because the state's submittal, which revises the performance test rule SIP, is fully approvable. The revisions made by MPCA to the performance test rule since 1976 vastly improve the performance testing requirements found in the Minnesota SIP. The 1976 rule, which is currently enforceable by EPA in the SIP (Minn. R. 70 17.2000), lacks many of the requirements now specifically set forth in the revised state rules.

EPA reviewed the SIP revision request for completeness based on the completeness requirements contained in Title 40 of the *Code of Federal Regulations,* Part 51, Appendix V. The EPA determined that the submittal is complete, and notified the State of Minnesota in a March 23, 1999 letter from Richard C. Karl, EPA, to Karen Studders, MPCA. The state has adequately addressed EPA's concerns, as discussed below, and the performance test SIP revision satisfies the applicable requirements of the Act. A more detailed explanation of how the state's submittal meets these requirements is in EPA's June 19, 2001 Technical Support Document (TSD).

*3. What Is the Background for This Action?*

A. Original Performance Test Rule SIP Submittal

Minnesota promulgated the original performance test rules in 1976 as Air Pollution Control 21 (APC 21). APC 21 was submitted to EPA in 1980 as part of Minnesota's Total Suspended Particulate Matter control plan and was incorporated into the SIP on May 6,

1982 (47 FR 19520). The state recodified APC 21 to Minn. R. 7005.1860 in 1983, and yet again to Minn. R. 7017.2000 in 1993. The state made only minor changes to the performance test rule between 1976 and 1993. MPCA initiated major additions to the performance test rule in 1993 as described below.

B. 1993 Rulemaking Changes to the Performance Test Rule

The MPCA revised the performance test rule in 1993 for the following reasons: (1) The need to clarify and consolidate the state's performance test requirements; (2) the increase in the number of regulated pollutants and the increase in available test methods for performance testing; and (3) the need to use a definition of ''PM10'' that is consistent with the federal definition. On December 6, 1993, the state repealed the 1976 performance test rule, Minn. R. 7017.2000, and the 1993 performance test rule, Minn. R. 7017.2001–2060, became effective.

EPA reviewed and commented on the rule during its development and had identified several issues that required resolution before the rule could be approved into the SIP. EPA and MPCA staff participated in numerous discussions subsequent to the rulemaking to resolve these issues. EPA formally provided MPCA with its final comments by letter dated May 9, 1997. EPA's primary concerns with the 1993 version of the performance test rule were that certain provisions in the regulations could unintentionally impede enforcement, and that provisions addressing malfunction, startup and shutdown were less stringent than the federal New Source Performance Standards (NSPS).

## II. Review of State Implementation Plan Revision

*1. Why Did the State Submit This SIP Revision?*

MPCA initiated its latest revision to the performance test rule to address EPA's May 9, 1997 comments. As previously stated, in 1993 the state repealed the 1976 version of the performance test rule, which is currently in the Minnesota SIP.

In a June 25, 1997 letter to EPA, MPCA staff responded to EPA's May 9, 1997 comments with additional revisions to the rule. Due to filing errors, MPCA placed the performance test rule on public notice twice, from July 28 to August 27, 1997 and from April 20 to May 20, 1998 before rulemaking was completed on the final rule.

Because over a year had passed between MPCA's June 25, 1997 response to EPA's May 9, 1997 comments and the completion of formal rulemaking, MPCA re-responded to EPA's comments which it included in their December 16, 1998 SIP submittal.

*2. What Information Did Minnesota Submit, and What Were Its Requests?*

In order to resolve those issues that EPA identified as impediments to SIP approval, MPCA made the following revisions to its performance test rule. MPCA revised language in the performance test rule to reference the use of credible evidence where a test does not meet the administrative and technical requirements of the rule, and incorporated NSPS language to make the revised rule's provisions regarding malfunction, startup and shutdown equally stringent to the federal requirements. MPCA also incorporated a number of relatively minor language changes to help clarify the intent of the rule. Additional changes to the performance test rule were based on MPCA's review and experience since the state adopted the rule in December 1993, and the streamlining of certain administrative procedures. EPA has reviewed both the 1997 and 1998 response documents submitted by MPCA and has found that the state has adequately addressed EPA's concerns.

The State has requested that EPA approve the following: (1) The removal of Minn. R. 7017.2000 from the SIP, since this rule was repealed by the state in 1993; (2) the inclusion of the revised performance test rule, Minn. R. 7019.2001–2060, into the SIP; and (3) the inclusion into the SIP of updates to small portions of the opacity rules and other related rules identified while amending the performance test rule. Listed below are some of the changes made by the state to strengthen the performance test rule since it was incorporated into the SIP in 1976.

*Definitions (7017.2005).* A detailed set of definitions for the terms used in the performance test provisions was added to enhance the clarity and enforceability of the requirements.

*Federal Testing Requirements and Test Methods (7017.2010, 7017.2015, and 7017.2050).* The amended rule requires compliance with current EPA test methods. Because the rule incorporates by reference federal test methods and any future amendments or versions of those methods, the SIP will automatically require compliance with the latest EPA requirements (including testing requirements set forth in NSPS and NESHAPS).

*Pretest Requirements (7017.2030).* Substantial pretest requirements have been added, including a requirement to submit a detailed test plan and to meet with MPCA personnel prior to testing.

*Testing Procedures and Quality Assurance (7017.2045 7017.2060).* Incorporates new language regarding testing procedures and quality assurance.

*Operational Requirements and Limitations (7017.2025).* Establishes enforceable operating limitations based on tested conditions to better ensure that the compliance shown during testing is actually maintained during day-to-day operations.

*Reporting and Certification Requirements (7017.2035, 7017.2040).* Prescribes detailed reporting requirements, including what information must be in the test report, and specific requirements for responsible persons to certify the sampling, analysis, and reporting of the test results.

*Consequences for Failing a Test (7017.2025, subparts 4 and 5).* Lays out specific retesting requirements and a standard requirement to shut down units failing a retest except in certain circumstances.

*Credible Evidence (7017.2020, subpart 6).* Ensures that no person can mistakenly assume that the performance test requirements in any way undermine the ability to use any credible evidence to establish a violation.

*Changes to Opacity Averaging Times in Performance Standards (7011).* Changes the averaging times of all opacity limit excursion levels to six-minute intervals, and proportionately lowers the excursion limit. This results in an opacity standard that is essentially equivalent and consistent with EPA Method 9 and therefore makes the excursion limits more enforceable.

## III. Final Rulemaking Action

EPA is approving into the Minnesota SIP revisions to the Minnesota performance test rule. The Minnesota performance test rule was originally approved into the SIP on May 6, 1982 (47 FR 19520). Specifically, EPA is approving into the SIP Minnesota Rules 7017.2001 through 2060, and amending the following rules currently in the SIP with amendments adopted by the state on July 13, 1998: Minn. R. 7011.0010, 7011.0105, 7011.0510, 7011.0515, 7011.0610, 7011.0710, 7011.0805, 7011.1305, 7011.1405, and 7011.1410. In addition, EPA is removing Minn. R. 7017.2000 from the SIP, since this rule was repealed by the state in 1993. As described above, MPCA has addressed the issues identified by EPA and the performance test rule revision is therefore fully approvable.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective July 12, 2002 without further notice unless we receive relevant adverse comments by June 12, 2002. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective July 12, 2002.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

## IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: January 17, 2002.

**David A. Ullrich,**

*Acting Regional Administrator, Region 5.*

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

2. Section 52.1220 is amended by adding paragraph (c)(58) to read as follows:

### § 52.1220 Identification of plan.

* * * * *

(c) * * *

(58) On December 16, 1998, the State submitted an update to the Minnesota performance test rule, which sets out the procedures for facilities that are required to conduct performance tests to demonstrate compliance with their emission limits and/or operating requirements. In addition, EPA is removing from the state SIP Minnesota Rule 7017.2000 previously approved as APC 21 in paragraph (c)(20) and amended in paragraph (c)(40) of this section.

(i) Incorporation by reference.

(A) Amendments to Minnesota Rules 7011.0010, 7011.0105, 7011.0510, 7011.0515, 7011.0610, 7011.0710, 7011.0805, 7011.1305, 7011.1405, 7011.1410, 7017.2001, 7017.2005, 7017.2015, 7017.2018, 7017.2020,

7017.2025, 7017.2030, 7017.2035, 7017.2045, 7017.2050 and 2060, published in the *Minnesota State Register* April 20, 1998, and adopted by the state on July 13, 1998.

[FR Doc. 02–11734 Filed 5–10–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 70

**[CT–021–1224a; A–1–FRL–7210–9]**

## Clean Air Act Final Approval of Operating Permits Program; State of Connecticut

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

**ACTION:** Final rule.

**SUMMARY:** EPA is granting full approval to the Clean Air Act (Act), Operating Permits Program of the State of Connecticut (program). Connecticut submitted its program for the purpose of complying with the Act's directive under title V that states develop programs to issue operating permits to all major stationary sources and certain other stationary sources of air pollution. EPA granted interim approval to Connecticut's initial operating permit program on March 24, 1997. On August 13, 2001, EPA proposed full approval of Connecticut's pending revised program, provided the state finalized the sections of its proposed rules that address EPA's interim approval conditions. On January 11, 2002 EPA received Connecticut's adopted revisions to its program. On March 15, 2002, EPA proposed full approval to rule changes Connecticut made that were not related to EPA's interim approval issues. The Agency has determined that Connecticut's program fully meets the requirements of title V.

**DATES:** This rule is effective on May 31, 2002.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA.

**FOR FURTHER INFORMATION CONTACT:** Donald Dahl, (617) 918–1657.

**SUPPLEMENTARY INFORMATION:**

The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION** section:



### I. What Action Is EPA Taking Today?

EPA is taking final action to approve the changes Connecticut made to its regulations (R.C.S.A. Sections 22a–174–1, 22a–174–2a and 22a–174–33) regarding the state's title V permitting program. The Agency is granting full approval to Connecticut's title V permitting program because Connecticut has made all the necessary changes to its program required by EPA's interim approval and the additional program changes that the state made meet the requirements of title V and EPA's state operating permit program regulations at 40 CFR part 70 (part 70). Details of the state's regulatory changes can be found in EPA's two proposed rulemakings, 66 FR 42496 (August 13, 2001) and 67 FR 11636 (March 15, 2002).

EPA received comments from several groups on the proposed rulemakings. Responses to relevant comments are contained in the following section. In the final adoption, the state made several changes to its proposed rule in response to comments the state received. These changes do not effect the substance of the provisions EPA relied on when it proposed to grant full approval to Connecticut's program. The exact changes the state made can be found as part of EPA's public record. In addition, in EPA's proposal of March 15, 2002, the Agency explained several interpretations of the state's rules upon which we are relying to fully approve the program. The Connecticut Department of Environmental Protection (DEP) has submitted a letter confirming DEP's agreement with our interpretations. See letter from Carmine DiBattista to Donald Dahl, April 12, 2002.

Unlike the prior interim approval, this full approval has no expiration date. However, the state may revise its program as appropriate in the future by following the procedures of 40 CFR 70.4(i). EPA may also exercise its oversight authority under section 502(i) of the Act to require changes to a state's program consistent with the procedures of 40 CFR 70.10.

### II. What Issues Were Raised During the Public Comment Periods and What Are EPA Responses?

EPA received several comments on its proposals during the public comment periods. The state's rule changes touch upon three separate, though related, programs—the title V operating permit program, the new source review (NSR) preconstruction permit program, and mechanisms that may be used to limit a source's potential emissions. EPA received comments that raise issues about all three programs. EPA is not taking action here on the portions of the state's rule changes that concern NSR and the mechanisms that may limit potential emissions. In the Agency's Technical Support Document, EPA has categorized the comments into three areas: comments relating to the title V program, comments relating to new source review, and all other comments including several comments on section 22a-174–3b which establishes operational requirements for facilities that assure their emissions will remain at insignificant levels. The requirements of section 3b may ultimately play a role in a facility's potential to emit. But this section is not part of the title V program, and relates more to the requirements for staying out of the title V program. Comments concerning new source review or other programs, including section 3b, are not related to EPA's proposal and are beyond the scope of today's actions. EPA is now responding only to the comments that are relevant to fully approving Connecticut's title V program. Those comments and our responses are as follows:

1. *Comment:* The commenter states that Connecticut did not fully meet a state legislative mandate that requires the DEP to identify and explain differences between federal and state requirements.

*Response:* Under section 506(a) of the Clean Air Act, a state is free to establish ''additional permitting requirements not inconsistent with [the] Act.'' Therefore, EPA will not look behind a state's decision to include permitting requirements beyond the minima of the Act and part 70, provided the program satisfies those requirements. While state agencies may have an independent obligation under state law to explain their reasons for including requirements beyond those specified in part 70, that obligation does not apply to EPA's assessment of the program's adequacy under the Act and part 70.

2. *Comment:* The commenter states that the DEP should continue its work in clarifying terminology. Examples were given where clarity could be

improved. Terms such as ''minor'' or ''modification'' will have different meanings depending on the context the term is used in.

*Response:* EPA agrees with the commenter that an unambiguous regulation is an important goal for Connecticut as well as the Agency. We also agree with the commenter that Connecticut has made major improvements in clarity to its title V regulations. As the program is implemented in the future, we will continue to work with Connecticut in addressing any areas of the state's rule that may be unclear to the public or the regulated community. EPA believes that the meaning of the terms ''minor'' and ''modification'' are reasonably clear when read in the context of each regulatory requirement.

3. *Comment:* The commenter requested the state to clarify the intent of the phrase ''any other state located within fifty (50) miles of a Connecticut Title V source'' contained within the definition of ''Affected State or States'' in Section 22a–174–1 of the state regulations. The current state rule is unclear as to whether ''the within 50 mile test'' applies from the Connecticut state border or from the location of the permitted source.

*Response:* Part 70 defines ''affected state'' as all states whose air quality may be affected and which are contiguous to the state in which the title V source exists in and any other state within 50 miles of the source. The state's definition in section 22a–174–1 differs from part 70 only in that Connecticut lists the contiguous states and removes the requirement that the source may affect the air quality in that contiguous state. Both Connecticut's rule and part 70 determine the 50 mile rule based on the distance between another state's border and the location of the title V facility. Connecticut's rule satisfies the part 70 requirements for identifying affected states.

4. *Comment:* The commenter asks the state whether the definition of ''Minor Permit Modification'' means either a permit modification under the new source review program or a permit modification under the title V permitting program.

*Response:* The term ''minor permit modification'' as it is used in Connecticut's air regulations can mean either a modification to a title V permit or a new source review permit. When the term is read in context, however, the state's regulations make a source's obligations reasonably clear when making a change that would require a minor permit modification to its title V permit. This is also true for a source that is required to obtain a minor permit modification under the new source review program.

5. *Comment:* The commenter asks the state whether the definition of ''non-minor permit modification'' means either a permit modification under the major new source review program or the title V permitting program.

*Response:* The term ''non-minor permit modification'' as it is used in Connecticut's air regulations can mean either a major modification to a title V permit or a major new source review permit. The state's permit process regulations consolidate provisions for title V and NSR permits where possible to avoid repetition of similar procedural requirements. When the term is read in context, however, the state's regulations make a source's obligations reasonably clear when making a change that would require a non-minor permit modification to its title V permit. This is also true for a source that is required to obtain a non-minor permit modification under the major new source review program.

6. *Comment:* The commenter asks the state why the phrase ''who are legally'' was removed from the definition of who is responsible as an ''operator.'' The commenter suggests that the state limit the definition by adding ''legally'' when describing who can be considered responsible as an operator. The commenter interprets the proposed definition of operator, without the term ''legally responsible,'' as possibly making all employees subject to permit requirements.

*Response:* The term ''operator'' in the state's regulations is used to define who is responsible for a source. For example, section 22a–174–33(c)(1) states that the title V provisions shall apply to the owner or operator of a title V source. Connecticut has agreed with the commenter and has added the phrase ''who are legally responsible for the operation of a source'' back into the definition of ''operator.'' This change does not affect EPA's ability to fully approve the state's program. It is the intent of part 70 to hold any operator or owner, including their agents, who are legally responsible for a source's operations liable for meeting the Act's requirements.

7. *Comment:* The commenter states that adding the phrase ''portable emissions units'' to the definition of ''stationary sources'' will lead to unnecessary permitting of de minimus sources. According to the comment, de minimus sources would include, among other things, snow making machines, rented engines, and spray painting equipment. The commenter suggests removing the reference to ''portable emissions units.''

*Response:* The term ''stationary source'' is used extensively in the state's title V regulations. In order to clarify what process units are considered emission units at a stationary source, the state proposed to add to the term ''stationary source'' portable emission units that remain stationary at a source. The state's clarification is consistent with EPA guidance when dealing with emission units that are portable. Therefore, EPA disagrees with the commenter that the state definition of ''stationary source'' should remove the term ''portable emission unit.'' For example, under the title V program in Vermont, the state correctly included snow making machines as emission units in the title V permit for Okemo Mountain, Incorporated.

8. *Comment:* The commenter requests that the state incorporate-by-reference the federal definition of ''volatile organic compound'' in Section 22a–174–1 of its regulations. The comment states that this will minimize the need for the DEP to revise the definition every time EPA changes the definition.

*Response:* The term ''VOC'' is used in the state's title V regulations in the definition of ''regulated air pollutant.'' EPA agrees with the commenter that incorporating the federal definition of VOC will make it easier for the state to recognize future changes EPA makes to the federal definition. The state also agrees with the commenter and has changed the definition of VOC to simply incorporate EPA's definition found in ''40 CFR 51.100(s), as amended from time to time.''

9. *Comment:* The commenter requests the state to clarify and modify the signatory responsibilities requirements found in section 22a–174–2a(a). This section of the state rule identifies who the responsible official is for purposes of certifying documents under the title V permit program. The state should clarify that people who sign documents in accordance with section 22a–174–2a(a)(1) be authorized in accordance with section 22a–174–2a(a)(2). The state should also use the existing language in section 22a–174–33(b) regarding responsible officials and authorization. The state should clarify that an authorization goes to a position rather than a specific person. Lastly, the requirement for state approval when signatory responsibility is delegated is overly burdensome.

*Response:* EPA identified as an interim approval issue the definition of a ''responsible official'' for documents submitted under the title V program. *See* 62 FR 13830–13833 (March 24,

1997). As discussed in EPA's August 13, 2001 proposal to fully approve Connecticut's program, the state's proposed rule fully addressed EPA's interim approval issue. To address comments the state received, Connecticut has made changes to its provisions for identifying a ''responsible official.'' The state changes clarify the procedures a company must follow when designating an individual as a responsible official. The state's final rule still satisfies the federal requirements for ''responsible official.''

As discussed in response to comment number 1, above, EPA does not have authority to look behind a state's decision to include permitting requirements in addition to those specified in part 70. Therefore, whatever burden might be created by Connecticut's requirement that DEP approve delegations of signatory responsibility is not relevant to EPA's review and approval of this program.

10. *Comment:* The commenter noted that DEP provides for adjudicative hearings, as well as less formal legislative hearings, as an option for satisfying the requirement that there be an opportunity for a hearing on permits. The commenter asserts that EPA has interpreted the Act to require only the less formal legislative hearings. Additionally, the commenter requests the DEP to consider limiting the requirement to hold a public adjudicative hearing by adding a threshold that one must make a ''material request'' before a hearing would be granted.

*Response:* The provisions of 22a–174–2a(c)(6) and 22a–174–2a(c)(7) governing non-adjudicative hearings and meetings satisfy the federal requirement to provide an opportunity for a hearing for Title V operating permits and new source review permits. In both programs, however, a state may include procedural requirements, including adjudicative hearing procedures, in addition to the federal minimum where the state agency deems it appropriate. EPA has found it appropriate for states to require that a request for a hearing must raise a material issue; it would be plainly unreasonable to require a state to hold hearings on immaterial issues.

11. *Comment:* The commenter notes that ''issue of a subject permit * * *'' should be ''issuance of a subject permit * * *'' in section 22a–174–2a(c)(7).

*Response:* Connecticut has corrected this error. As stated in the response to the previous comment, section 22a–174–2a(c)(7), in conjunction with section 22a–174–2a(c)(6), satisfies the federal requirements when a public hearing is requested.

12. *Comment:* Section 22a–174–2a(e)(3)(B)(i) requires a source to include in its application for a minor permit modification any ''modification in potential emissions.'' Since the term ''modification'' is a defined term, the commenter requests the word ''modification'' be replaced by the word ''increase.''

*Response:* The state agreed with the commenter and changed the word ''modification'' to ''increase'' when describing a change in emissions due to a project that requires a minor modification to the part 70 permit. EPA agrees that this change clarifies the state's proposed rule. The state's rule still satisfies the federal requirements regarding the content of a title V application for a minor permit modification.

13. *Comment:* Connecticut requires a 21 day waiting period before a source can make the change it proposes in its application for a minor permit modification. The commenter requests that the state remove the waiting period and make the process consistent with part 70.

*Response:* The provision of section 22a–174–2a(e)(3)(c) meets the federal requirement for minor permit amendments that allow a source to make the proposed change prior to receiving a permit modification. As stated earlier, a state may include procedural requirements in its title V program, including a waiting period for minor permit modifications, in addition to the federal minimum requirements when the state agency deems it appropriate.

14. *Comment:* The commenter requested that Connecticut incorporate a safe harbor provision in the procedures for a minor permit modification in section 22a–174–2a(e)(4) of the state's regulations. A safe harbor provision would protect a source from enforcement if the source acted in good faith when it implemented its minor permit modification, even if it was determined later that the modification did not qualify as a minor permit modification.

*Response:* EPA disagrees with this comment. The part 70 program does not allow a state to create a safe harbor provision for a source that violates program regulations even though the source is complying with its application and applied for the minor modification in good faith. The minor permit modification procedures in 40 CFR 70.7(e)(2) allow a facility to implement a change prior to the permit authority revising the permit to address the change. But this provision imposes strict liability on a facility that submits a change that it purports to be a minor permit modification, but ultimately turns out to require a significant permit modification. This strict liability is an important element of the structure of 70.7(e)(2), because it provides a significant disincentive to permitees that might be tempted to rush a change through the system with an unfounded claim that it is a minor modification. Therefore, Connecticut cannot, consistent with part 70, create the ''safe harbor'' the commenter recommends, and the state's rule is consistent with part 70.

15. *Comment:* The commenter requests that Connecticut add language to section 22a–174–2a(d)(4)(D) that would explicitly state that modifications qualifying as operational flexibility and off-permit changes would not be subject to non-minor permit modification requirements.

*Response:* The state has made changes to its proposed rule to address this comment. It is consistent with part 70 to exclude changes at a facility that qualify as changes under the off-permit or operational flexibility requirements from the requirements for significant permit modifications. Therefore, the state's changes to its rule that address this comment do not impact EPA's ability to approve this program.

16. *Comment:* The commenter requests that the approval of ''equivalent monitoring, recordkeeping, or reporting'' be added to administrative amendments found at 22a–174–2a(f)(2) of the state regulations.

*Response:* In 40 CFR 70.7(d), EPA lists the types of changes a state may allow sources to make as administrative amendments. Section 70.7(d)(1)(iii) states a change is eligible as an administrative amendment if the permit change ''requires more frequent monitoring or reporting.'' Since the request is to add ''equivalent monitoring * * *,'' EPA disagrees with the comment and supports Connecticut's position not to add ''equivalent monitoring, recordkeeping, or reporting'' to its list of permit changes eligible for administrative amendments. Making a determination that a substitute monitoring regime is ''equivalent'' to that provided in the permit involves a level of regulatory judgment that is not appropriate for the administrative amendment procedure. These procedures are designed for amendments that are largely ministerial or that are indisputably more protective of the environment, such as increased monitoring frequency.

17. *Comment:* Section 22a–174–2a(i)(1) requires permit renewal applications to include ''any

modifications in potential emissions resulting from the proposed modifications.'' The commenter suggests clarifying language by replacing ''any modification'' with ''any increase'' since the term modification is a defined term.

*Response:* Connecticut essentially agreed to make this clarification in its regulations, and the final rule provides that a renewal application must describe any ''increases or decreases in potential emissions resulting from any proposed modifications.'' This revision is consistent with part 70.

18. *Comment:* The commenter states that section 22a–174–3a(m) of Connecticut regulations is not identical to part 63 with regard to case-by-case MACT determinations. For example, under Connecticut's definitions, an increase in HAP emissions at the entire source, not just process lines, is used to determine if the thresholds for a 112(g) modification are triggered.

*Response:* Case-by-case MACT determinations are commonly referred to as 112(g) modifications because they implement the requirements of section 112(g) of the CAA. Under part 63, the entire new or reconstructed process must be a major source by itself. A process is defined in 40 CFR part 63 as ''any collection of structures and/or equipment, that processes assembles, applies, or otherwise uses material inputs to produce or store an intermediate or final product.'' This means that a single facility may contain more than one process or production unit. Since the state's regulation determines applicability on a facility wide basis, the state's rule could potentially require more section 112(g) determinations than federal requirements. However a state may include requirements, including a more encompassing 112(g) program, in addition to the federal minimum for a part 70 program and other air pollution control programs where the state agency deems it appropriate. See sections 506(a) and 116 of the Act, 42 U.S.C. 7661e(a) and 7416.

19. *Comment:* The commenter states that Connecticut's rule does not exclude sources from the 112(g) program that use existing controls previously determined as BACT within 5 years of the modification (referred to as the ''good controls exclusion''). This omission could make the Connecticut 112(g) program more stringent than the federal program. The commenter requests that the state make section 22a–174–3a(m)(8) consistent with the federal requirements regarding situations when compliance with a MACT standard is not required for a source that is operating under a 112(g) determination.

*Response:* The comment is correct in that Connecticut's rule is more stringent than the federal rule regarding this issue. However, a state may include requirements, including a more encompassing 112(g) program, that go beyond the federal minimum for a part 70 program and other air pollution control programs.

20. *Comment:* The commenter requests that the state expand its list of exempted activities from 112(g) determinations in section 22a–174–3a(m)(2) to be consistent with federal requirements. The expanded list would include adding exemptions for electric utility steam generating units and research and development activities.

*Response:* The exemption for electric steam generating units is no longer applicable. *See* 65 FR 79825 (December 20, 2000). In its final rule, the state did add an exemption for research and development (R&D). To comply with the exemption, the state rule requires R&D activities to meet the federal requirements for R&D at 40 CFR 63.40(f). Exempting R&D activities from 112(g) requirements is consistent with federal requirements under part 63 and does not impact EPA's ability to approve the title V program.

21. *Comment:* The commenter suggests that the state incorporate-by-reference the federal application requirements for a case-by-case MACT determination. The commenter states that Connecticut's rule does not contain administrative procedures nor an opportunity for public comment. The current proposed state regulations are also confusing when determining the required information in an application for a 112(g) modification.

*Response:* Connecticut is not required to incorporate the federal requirements for 112(g) applications. Instead, the state has the option to develop its own regulations for applications, as long as the state regulations are consistent with federal requirements. EPA has determined that section 22a–174–3a, including subsections (c) and (m), meet the federal requirements for a complete application, including adequate public notice, under the 112(g) program.

22. *Comment:* The commenter requests the state to clarify section 22a–174–3a(m)(7). This section determines when a permittee that has received a 112(g) determination is required to comply with the emission limit for the applicable MACT standard. The state rule is unclear about what happens when a source that installs case-by-case MACT controls that are different than the MACT standard later adopted by EPA.

*Response:* The state regulation requires a facility, even one with a case-by-case MACT determination, to comply with a MACT standard within 8 years after a MACT is promulgated or within 8 years of the permittee's first compliance date for the emission limitation under the MACT determination, whichever is earlier. If the first compliance date precedes the MACT promulgation, then the permittee would have less than 8 years from the promulgation. Since the federal requirement is for all sources with case-by case determinations to meet the MACT standard within eight years of the standard's promulgation, the state rule meets federal requirements.

23. *Comment:* The commenter is concerned that the state rule regarding alternative operating scenarios could be interpreted too broadly, requiring separate permit conditions for each level of production.

*Response:* It is not the intent of a title V permit program to require a source to list every production level as an alternative operating scenario. EPA has determined that Connecticut's definition of an alternative operating scenario is consistent with the Agency's policy and guidance on the issue.

It is true that the definition of ''alternative operating scenario'' in definitions section of Connecticut's operating permit program regulations is quite broad. *See* R.C.S.A. sec. 22a–174–33(a)(1). Read out of context, it is possible to conclude this definition implies that any variation in a facility's operations is relevant under this program, regardless of the bearing that variation has on the permit and the applicable requirements.

But it is important to understand this definition in the context in which it is used in the program regulations. Permit applicants must provide information ''for each alternative operating scenario that the applicant has included in the title V permit application.'' R.C.S.A. sec. 22a–174–33(g)(1)(E). The permit content requirements mandate that each permit include a ''statement of all terms and conditions applicable to any allowable alternative operating scenario, including a requirement that each such alternative operating scenario shall meet all applicable requirements * * *.'' R.C.S.A. sec. 22a–174–33(j)(1)(J). These provisions make it reasonably clear that an applicant must provide information about those operating scenarios that must be addressed in the permit and which require separate attention because of the different compliance scenarios or different applicable

requirements that apply to those scenarios.

24. *Comment:* The commenter requests a determination as to how title V applicability in the state rules affects landfills and other sources subject to section 111(d) plans of the CAA.

*Response:* According to Section 22a–174–33(a)(10)(D) of the state's rule, any source subject to a 111(d) plan would be defined as a ''Title V source.'' However, not all ''Title V sources'' are required to obtain a title V permit. Section 22a–174–33(c)(2)(D) of the state's rule, exempts sources subject to a 111(d) plan, in addition to other types of sources, from obtaining a Title V permit if EPA exempts such a source. For example, if a closed landfill is not otherwise required to obtain a Title V permit, 40 CFR 62.14352(f) exempts the landfill from obtaining a Title V permit provided that the landfill meets certain criteria. Since EPA has exempted this limited class of landfills from having to obtain a Title V permit, Section 22a–174–33(c)(2)(D) is invoked and closed landfills in Connecticut meeting the requirements of 40 CFR 62.14352(f) are exempted from Title V permitting. Please note that if Connecticut submits a rule that would substitute for the federal rule for existing landfills, and EPA approves the state rule, the exemption from Title V permitting listed in 40 CFR 62.14532(f) would no longer apply. The exemption would have to exist in the EPA approved state rule.

25. *Comment:* The commenter believes that the references to a general permit in sections 22a–174–33(d)(9) and (10) are redundant and unnecessarily repeat the requirements of sections 22a–174–33(c)(4) and (5).

*Response:* Section 22a–174–33(d) of Connecticut's rules deals with regulations that limit a source's potential emissions. Subsection (d) does not contain provisions for a general permit for the title V permit program. In fact, the main reason Connecticut developed section 22a–174–33(d) is to allow a source to limit its potential emissions to avoid the title V permit program. Sections 22a–174–33(c)(4) and (5), on the other hand, address how title V general permits operate under Connecticut's program. Specifically, they spell out the consequences for failing to comply with a general permit and for failing to qualify for a general permit under which the facility claims it is operating. These provisions are not redundant with the general permit provisions designed to limit a source's potential to emit under sections 22a–174–33(d)(9) and (10).

26. *Comment:* The commenter believes that the state has gone beyond the federal requirement when determining the consequences when a source is found to be violating a general title V permit or a general permit limiting potential to emit. Connecticut's rule states that if a source violates either type of a general permit, the source would be considered to be operating without a title V permit.

*Response:* EPA disagrees with the comment and has determined the state regulation (sections 22a–174–33(c)(4) and (d)(10)) is consistent with federal requirements. The commenter is correct that the minimum federal requirement in EPA's part 70 regulations for liability provisions in a title V general permit program includes a provision deeming the source to be operating without a title V permit if the source is found not to qualify for a general permit. Connecticut added section 33(c)(5) to address EPA interim approval issue number 23 to meet this requirement. In addition, Connecticut provided that sources which fail to comply with their general permits will be deemed to be operating without a title V permit under section 33(c)(4). While not required by the part 70 regulations, this provision is certainly allowed under title V pursuant to section 506(a) of the Act. That section allows a state to establish ''additional permitting requirements not inconsistent with [the] Act.'' Connecticut's decision to provide vigorous enforcement mechanisms to ensure compliance with its general permit programs is certainly not inconsistent with the Clean Air Act.

The requirement in section 33(d)(10), while similar in structure to 33(c)(4), is not strictly speaking part of EPA's review of the operating permit program. This provision addresses a source's liability when it fails to comply with a general permit to limit its potential to emit. As noted in response to the prior comment, the purpose of 33(d) is to keep sources out of the title V program, not to address the requirements of title V or part 70.

27. *Comment:* The commenter requests the state to be consistent with the federal requirements regarding the timing of a title V application for a new major stationary source. The federal rule requires an application within 12 months of commencing operation. The state's proposed rule required an application within 12 months of applying for an NSR permit.

*Response:* The state addressed this comment by changing its proposed rule to be consistent with federal regulations. Section 22a–174–33(f)(4) requires a title V application within 12 months of commencing operation for a new major stationary source or a major modification to an existing title V source or within 90 days if notified by the commissioner, whichever date is earlier. This state rule addresses the application deadline requirements of 40 CFR 70.5(a)(1)(ii).

Section 22a–174–33(f)(4) does not address the requirement in 40 CFR 70.5(a)(1)(ii) that the title V permit must be modified prior to operating the modification when its existing title V permit prohibits such construction or change in operation. However, nothing in section 22a–174–33(f)(4) of the state rules excuses a source applying for a major modification from complying with its existing title V permit. Section 22a–174–2a(d)(5)(B) of the state rules clearly prohibits a source deviating from its existing permit unless the state first modifies the permit.

28. *Comment:* The commenter states the vagueness of section 22a–174–33(h) of Connecticut's rules may not allow an applicant a reasonable opportunity to correct application deficiencies before being held liable for an insufficient permit application.

*Response:* Connecticut has revised section 22a–174–33(h) to clarify the consequences if a source fails to meet the requirements for submitting a timely application either for the first time or when the state determines additional information is required in order to process an application. The state's final rule is still consistent with federal requirements and fully addresses EPA's interim approval issue. See 62 FR 13831, section III, no. 6.

29. *Comment:* The commenter requests that the state make its permit shield provisions in the state rules consistent with permit shield language in part 70, and that the state grant permit shield when issuing permits.

*Response:* Connecticut's permit shield provisions in section 33(k) are substantially identical to the federal shield provisions in section 70.6(f) of EPA's part 70 regulations. Both regulations require that a permit shield will only cover those applicable requirements that are included and are specifically identified in the permit. Therefore, the commenter's concern that the state's shield provisions are more stringent that federal requirements appears to be misplaced.

The commenter's concern that the state does not always provide for a permit shield when issuing permits is not relevant to this program review. The permit shield language is an optional element for a state title V program. It is solely within Connecticut's discretion to grant a permit shield. As long as the

authority for granting a shield under section 22a–174–33(k) is consistent with federal requirements, it is up to the state to decide when to use that authority.

30. *Comment:* The commenter requests the state to relax the proposed rule regarding prompt reporting. The commenter is concerned that the state has eliminated the provision in section 33(p)(1) that commenced the period for measuring ''prompt'' reporting from the time at which the permit holder reasonably should have learned of the occurrence. The commenter is concerned that some deviations will be difficult to discover, and the deadline for reporting will have passed before the permit holder knows that the deviation must be reported.

*Response:* Part 70 is not specific about how a state should define ''prompt'' for reporting deviations, and leaves the state substantial latitude in structuring this requirement. As described in section IV., no. 8 of the proposal, EPA stated that sections 22a–174–33(o)(1) and (p)(1) of Connecticut's proposed rules are consistent with how EPA defines prompt reporting in the federal program. *See* 40 CFR 71.6(a)(iii)(B). Since Connecticut has not changed these proposed provisions, EPA has determined that the state's regulations governing prompt reporting meet the requirements of part 70. Any concern about the strict standard in section 33(p)(1) for reporting a deviation can be addressed as part of program implementation and with the reasonable application of enforcement discretion.

31. *Comment:* The commenter requests the state confirm that it has deferred title V permitting of chrome emitting sources for five years.

*Response:* Section 22a–174–33(c)(2)(D) essentially incorporates any decisions EPA has made under the NSPS and NESHAP programs, including the MACT standards program, to defer facilities from the requirement to have a title V permit. This section allows for such deferrals where the sole reason for bringing a source into the title V program is the applicability of a MACT standard and where EPA has promulgated a deferral of the title V permitting requirement for that MACT standard or certain sources under it. At the discretion of the permitting authority, EPA has deferred chrome sources from becoming subject to the title V permit program until December 9, 2004. A title V application will be due one year after becoming subject to the program, on December 9, 2005 unless EPA exempts or continues to defer title V applicability for chrome emitting sources.

32. *Comment:* The commenter asks why did the DEP define the term ''principal executive officer'' in the last sentence of section 22a–174–2a(a)(1)(E) of the state's rule because the term appears nowhere else in the section. This section of the state rule lists the positions of people who can sign as the responsible official for federal entities.

*Response:* DEP clarified this provision by including ''principal executive officer'' in the list of federal officials who can sign title V permitting documents as responsible officials. Thus, the definition for this term now makes sense in the context of the final regulation, and the provision is consistent with part 70, section 70.2.

33. *Comment:* The commenter believes that section 22a–174–33(f)(3) includes a typographical error and the phrase ''may issue'' does not belong in the last phrase of the section. This section of the state regulation contains the deadlines for applying for a title V permit when a source's potential emissions are minor, but when the source is subject to either 40 CFR parts 60 or 61.

*Response:* Connecticut agreed with the comment and deleted the phrase ''may issue.'' The deletion of the phrase ''may issue'' does not impact EPA's proposal that states section 22a–174–33(f)(3) has been adequately revised to address the interim approval issue. See section IV, no. 20 of EPA's proposal.

34. *Comment:* The commenter requests that the state identify the forms that a facility must use to comply with the ''non-minor permit modification'' application process in section 22a–174–2a(e)(5)(B) of the state rules.

*Response:* On page 199 of its November 14, 2001 Hearing Report, Connecticut stated that it is developing forms for sources to use. However, the state made it clear, and EPA concurs, that a source is still required to submit all information required by the regulations if it desires a non-minor permit modification, even if the state has not yet developed a form.

35. *Comment:* A commenter expressed concern that the permit modification process for ''non-minor permit modifications'' is open-ended. Connecticut's regulation section 22a–174–2a(d)(8) requires the Commissioner to take final action on a non-minor modification within 12 months, but also provides that the modification will not be ''automatically be deemed sufficient or approved'' if the Commissioner takes longer than 12 months. The commenter asks what the consequence is if DEP misses its deadline for modifying a permit.

*Response:* EPA agrees with DEP that default issuance of ''non-minor'' permit modifications, which basically correspond to significant modifications under part 70, cannot be allowed consistent with sections 70.7(e)(4)(ii), 70.7(a), and 70.7(h). Therefore, it would not be appropriate to allow a facility to make a ''non-minor modification'' in its permit based solely on the fact that DEP has failed to act on its application within 12 months. EPA's significant permit modification regulations do provide that the ''permitting authority shall design and implement this review process to complete review on the majority of significant permit modifications within 9 months after receipt of a complete application.'' 40 CFR 70.7(e)(4)(ii). This provision does not mandate that the state bind itself to acting on all applications within 9 months. Rather it requires that the state use its authority to act on most significant modifications within 9 months. Connecticut's rule for processing ''non-minor modifications'' is consistent with this provision. Connecticut's procedures for taking public comment, offering an opportunity for a hearing, addressing affected state comments, and allowing for EPA review give DEP ample opportunity to implement its program so that it acts on a majority of ''non-minor modifications'' within 9 months. *See* R.C.S.A. 22a–174–2a(b), (c), and (d).

36. *Comment:* A commenter agreed with Connecticut's incorporation of the federal definition for ''emission unit'' in section 22a–174–1

*Response:* EPA also agrees with the state's change in its definition for ''emission unit.''

37. *Comment:* The definition of ''federally enforceable'' elicited several comments. First, commenters asked whether ''permits to operate'' issued under section 22a–174–3 of the state's regulations are considered federally enforceable. Second, the commenters supported the state's decision to provide that practically enforceable limits should also be considered sufficient to limit a source's potential to emit. Commenters also submitted concerns that relate to the new source review program and are not relevant to this action.

*Response:* In a July 25, 1997 letter to Christopher James at DEP, EPA confirmed that state operating permits issued pursuant to section 22a–174–3(f) and (g) may be federally enforceable if they are issued consistent with the requirements of those regulations approved into the state implementation plan. As discussed below, EPA agrees that emission limits to reduce a facility's

potential to emit must be practically enforceable.

38. *Comment:* A commenter requested an explanation from Connecticut whether the change to the state's definition for ''fugitive emissions'' was intended to change the meaning of ''fugitive emissions'' as defined by EPA.

*Response:* Connecticut's hearing report makes it clear that it did ''not intend to alter or expand the meaning of ''fugitive emissions'' by the proposed change.'' DEP Hearing Report at 154 (November 14, 2001). Rather the state's change was made to shift the tense of the verb ''which could not reasonably pass through a stack * * *'' from past tense to the present tense ''that cannot pass through a stack .* * *'' Therefore, if emissions would reasonably be passed through a stack, this definition would exclude them from being treated as fugitive emissions. Connecticut's revised definition for ''fugitive emissions'' is consistent with 40 CFR 70.2.

39. *Comment:* The commenter requested an explanation of the state's intent concerning new language the state added to the definition of ''maximum capacity.'' The new language allows the state to accept a time frame different from 8760 hours per year when determining the maximum capacity of a piece of equipment.

*Response:* Connecticut responded that it intends to issue future guidance on determining ''maximum capacity.'' On January 25, 1995, EPA issued guidance titled ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under section 112 and Title V of the Clean Air Act (Act)'' that recognized inherent physical limits in a source's operations that would restrict a source's capacity. These restrictions would prevent a source from operating the pollution emitting devices 8760 hours per year. In this guidance EPA indicated that states have the authority to make judgements on inherent physical operational restrictions. The language Connecticut added to the definition of ''maximum capacity'' gives the state the authority EPA recognized in the Agency's guidance. EPA is committed in working with Connecticut in developing state guidance on when the use of 8760 hours of operation is inappropriate when calculating a source's potential emissions.

40. *Comment:* The commenter requests the state to limit the counting of fugitive emissions ''to the extent quantifiable'' within the definition of ''potential emissions.'' In addition, the commenter states the definition of ''potential emissions'' arbitrarily prevents pollution control equipment from being considered as a physical limitation on potential emissions where that equipment is integral to the source's operation.

*Response:* The term ''potential emissions'' is used in section 22a–174–33(a)(10) for determining whether a source is required to obtain a title V permit. The state disagreed with the commenter and did not add the language ''to the extent quantifiable'' when determining if fugitive emissions are counted towards a source's title V applicability. The state rule is consistent with part 70, where the language ''to the extent quantifiable'' is absent when describing fugitive emissions within the definition of ''major source.'' The state also disagreed with the commenter that pollution control equipment is treated arbitrarily under its definition of potential emissions, and EPA sees no reason to disagree with that conclusion. DEP clarified that it will consider ''inherent engineering, operational or technical capacity on an emissions unit that restricts the potential emission of such unit'' when determining the maximum capacity of a unit. Nothing in this standard arbitrarily excludes consideration of pollution control equipment that is integral to the design of an emissions unit, although the applicant may have a high burden to demonstrate that the operation and performance of the control equipment is an inherent aspect of the source's operation.

41 *Comment:* Several industry commenters objected to aspects of the new definition of ''practically enforceable'' in section 1(87) of the state's rule. Following some slight adjustments DEP made to the proposed definition in its final rule, the remaining relevant comments all expressed concern about the requirement that a facility must have ''CEM or equivalent'' monitoring if it wishes to limit its emissions using an emission limit or operating restriction with a 12-month rolling average averaging period.

*Response:* Strictly viewed, this comment is probably not directly relevant to the action EPA is taking today to approve Connecticut's title V program. The term ''practically enforceable,'' as well as the corresponding term ''federally enforceable,'' are used in DEP's regulations primarily to define how a facility may take limits on its potential to emit to avoid the title V operating permit program or other applicable requirements that are triggered based on a facility's potential emissions. So these terms do not relate so much to the implementation of the operating permit program EPA is approving as they bear on how to stay out of that program.

Nevertheless, EPA is responding to comments about the definition of ''practically enforceable'' because the meaning of this term might be relevant to how permit terms in a title V permit are crafted. For example, a title V permit holder may wish to take a limit in its permit reducing its potential to emit so as to avoid an otherwise applicable requirement. In this context, title V sources and the state may want to assess the practical enforceability of that limit. Therefore, EPA is responding to the comments on this definition.

Connecticut's definition of practically enforceable is built on the same principles as EPA's guidance on the enforceability of limits on potential to emit (PTE). *See e.g.* Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules and General Permits, from Kathie A. Stein, Jan. 25, 1995, and the materials summarized at p. 5 of this guidance. Both DEP and EPA are concerned that if a facility is relying on a PTE limit to avoid important applicable requirements or title V permitting, the agencies must be able to enforce those PTE limits readily on a short term basis. If we must wait for year before enforcing a PTE limit, the limit will have far less practical deterrent effect than a short term limit.

A limit based on a 12-month rolling averaging period strains at the boundary of this principle. It is not optimal for an agency to have to wait for a month to document compliance with a PTE limit. To be sure that we can determine compliance readily when the monthly compliance period is completed, the monitoring of such limits must be both accurate and timely.

A CEM meets this standard and provides a useful benchmark for the sort of monitoring that is necessary to make such limits practically enforceable. As DEP explained in its own response to comments, their rule does not mandate CEMs, but does require monitoring with similar characteristics—''qualitatively equal to that of CEM.'' DEP Hearing Report at 182 (Nov. 14, 2001). DEP and EPA understand that two critical qualities of CEMs are that they are accurate in their measurement of emissions and they produce data virtually contemporaneously. In addition to making timely compliance determinations possible at the end of each month, such monitoring would allow an agency inspector to arrive mid-month and look at the monitoring records of a facility to determine if it is on track to meet its PTE limit at the end of a month. EPA believes Connecticut's

requirement for ''CEM or equivalent'' monitoring for 12-month rolling average compliance periods is a reasonable step to making such longer term rolling PTE limits practically enforceable. During review of title V permits, EPA will monitor Connecticut's implementation of the ''CEM or equivalent'' requirement when a 12-month rolling average is used for the compliance period.

42. *Comment:* The commenter requested that Connecticut establish in the definition of ''Research and Development Operation'' a *de minimis* amount of commercial product activity in a laboratory. The commenter states that by adding a *de minimis* level to the definition, the definition would be consistent with EPA's proposed changes to part 70.

*Response:* Connecticut did revise the proposed amendments to section 33 with regards to how Research and Development Activities are treated. However, the state changes did not create a *de minimis* amount of product that could be sold commercially. Rather, the state's final rule essentially maintained the definition of ''Research and Development'' as the term was defined in the state's interim title V program which EPA had approved in 1997. If part 70 is amended as EPA proposed in 1996, EPA will work with Connecticut in making any state program changes that the revised federal rule would require or allow.

43. *Comment:* The commenter noted language appeared missing from the end of section 22a–174–33(j)(1)(F)(ii). ''For all other regulated air pollutants such limits are no [???].''

*Response:* Connecticut noted in its hearing report that a software error had led to the deletion of phrase ''less than one (1) ton per pollutant per year for each emission unit'' from the commenter's copy. The official version of the regulation contained the missing language so there was no typographical error.

44. *Comment:* The commenter requested that in order to take advantage of fuel cells, hydrogen, argon, and helium should be exempted in the states definition of ''air pollutant.''

*Response:* Connecticut did not add the requested exemptions to the definition of ''air pollutant.'' The state's definition of ''air pollutant'' is consistent with how that term is used in part 70.

45. *Comment:* One commenter inquired about EPA's assessment of section 22a–174–2a(f)(2)(F) in which EPA clarified that Connecticut's new source review program (NSR) does not include all the necessary elements of the title V program to allow NSR permits to be included in a title V permit using an administrative amendment. The commenter asked EPA to explain what provisions of Connecticut's new source review program do not meet all the requirements of sections 40 CFR 70.6, 70.7, and 70.8 and to specify the changes Connecticut would have to make in its NSR program to meet these requirements.

*Response:* EPA is not prepared here to catalogue exactly how Connecticut might enhance its NSR program to allow for administrative title V permit amendments. That question is not ripe as a formal matter, and it would not be prudent for EPA to spell out how DEP might revise its NSR program without first working with DEP to sort through the many choices DEP would have to make about the design of such NSR enhancements. It is sufficient for the purposes of the decision currently before EPA to say that the state's NSR program does not contain all the substantive and procedural elements of sections 70.6, 70.7, and 70.8—the most obvious example being that the state does not provide EPA an opportunity to object to NSR permits to block their issuance.

## III. What Is the Effective Date of EPA's Full Approval of the Connecticut Title V Program?

EPA is using the good cause exception under the Administrative Procedure Act (APA) to make the full approval of the state's program effective on May 31, 2002. In relevant part, the APA provides that publication of ''a substantive rule shall be made not less than 30 days before its effective date, except— * * * (3) as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). Section 553(b)(3)(B) of the APA provides that good cause may be supported by an agency determination that a delay in the effective date is impracticable, unnecessary, or contrary to the public interest. EPA finds that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes that it is in the public interest for the program to take effect before June 1, 2002. In the absence of this full approval of Connecticut's amended program taking effect on May 31, 2002, the federal program under 40 CFR part 71 would automatically require some sources to pay operating permit fees to the federal government in addition to fees the sources already pay to Connecticut under state law. EPA believes it is in the public interest for sources to avoid having to pay federal fees for permits the sources would not receive, since a federal program would only continue for a short time after June 1, 2002. Furthermore, a delay in the effective date is unnecessary because Connecticut has been administering the title V permit program for more than five years. Through this action, EPA is approving a few revisions to the existing and currently operational program. The change from the interim approved program which substantially met the part 70 requirements, to the fully approved program is relatively minor, in particular if compared to the changes between a state-established and administered program and the federal program. Finally, the state regulations EPA is approving have been effective under state law since March 15, 2002. Therefore, the regulated community has had more than 30 days to anticipate compliance with the requirements EPA is approving today.

## IV. How Does Today's Action Affect the Part 71 Program in Connecticut?

Today, EPA is fully approving Connecticut's title V program. Upon the effective date of this notice, the part 71 program will no longer be effective in Connecticut. However, a part 71 program could become effective at a future date if EPA makes a finding that Connecticut's title V program fails to meet the requirements of part 70. If such a finding is made, the Agency will use its authority and follow the procedures under section 502(i) of the CAA and 40 CFR 70.10.

## V. How Does EPA's Action Affect Indian Country?

In its program submission, Connecticut did not assert jurisdiction over Indian country. To date, no tribal government in Connecticut has applied to EPA for approval to administer a title V program in Indian country within the state. EPA regulations at 40 CFR part 49 govern how eligible Indian tribes may be approved by EPA to implement a title V program on Indian reservations and in non-reservation areas over which the tribe has jurisdiction. EPA's part 71 regulations govern the issuance of federal operating permits in Indian country. EPA's authority to issue permits in Indian country was challenged in *Michigan* v. *EPA,* (D.C. Cir. No. 99–1151). On October 30, 2001, the court issued its decision in the case, vacating a provision that would have allowed EPA to treat areas over which EPA determines there is a question regarding the area's status as if it is Indian country, and remanding to EPA for further proceedings. EPA will respond to the court's remand and explain EPA's approach for further

implementation of part 71 in Indian country in a future action.

### VI. What Are the Administrative Requirements Associated With This Action?

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the state and the federal government established in the Clean Air Act. This final approval also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. 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.

In reviewing state operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve state programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a state program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on May 31, 2002.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

### List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: May 6, 2002.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

## PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by revising the entry for Connecticut to read as follows:

### Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Connecticut

(a) Department of Environmental Protection: submitted on September 28, 1995; interim approval effective on April 23, 1997; revised program submitted on January 11, 2002; full approval effective May 31, 2002.

(b) [Reserved]

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[FR Doc. 02–11826 Filed 5–10–02; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

## 49 CFR Chapter I

**[Notice No. 02–05]**

## Hazardous Materials; Advisory Guidance on Packaging and Shipper Responsibilities

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Advisory guidance.

**SUMMARY:** This advisory document is to remind shippers of hazardous materials in commerce, particularly by aircraft, of their responsibilities to properly identify, package, and communicate the hazards of those materials in conformance with the Hazardous Materials Regulations. The intent of this

action is to enhance the safety of hazardous materials in transportation.

**FOR FURTHER INFORMATION CONTACT:** Michael G. Stevens, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone (202) 366–8553.

**SUPPLEMENTARY INFORMATION:** The Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) specify requirements for the safe transportation of hazardous materials in commerce by rail car, aircraft, vessel, and motor vehicle. In general, the HMR apply to each person who performs, or causes to be performed, functions related to the transportation of hazardous materials in commerce. The HMR prescribe requirements for classification, packaging, hazard communication, shipping papers, incident reporting, handling, loading, unloading, segregation, and movement of hazardous materials.

Each year, carriers report thousands of ''incidents'' involving the transportation of hazardous materials to the Research and Special Programs Administration (RSPA, we) in accordance with the HMR incident reporting requirements. An ''incident'' occurs when there is an unintentional release of hazardous material from a package (including a tank) or, as a direct result of hazardous materials, an ''incident'' requires immediate notification to the National Response Center (see §§ 171.15 and 171.16).

Many incidents result from noncompliance with the requirements in the HMR. They frequently stem from a shipper's lack of awareness of the HMR's requirements, rather than a deliberate violation. The safety of hazardous materials in transportation depends on persons engaged in day-to-day transportation-related activities making a concerted effort to comply with the HMR. We strongly urge all persons involved in the packaging and offering of hazardous materials to carefully examine all of their procedures to ensure compliance.

In this document, we discuss requirements that are applicable to persons who offer (or ship) hazardous materials. These are subdivided into the following seven areas: (1) Hazard identification, classification and communication; (2) general packaging requirements; (3) requirements for the use of packagings meeting United Nations (UN) performance standards; (4) additional packaging requirements for air shipments; (5) transportation security; (6) training of hazmat employees; and (7) obtaining Federal assistance.

Most of the guidance and information in this document applies to all modes of transportation. However, this document emphasizes the requirements for air transportation because of the number of reported incidents involving air transportation and the vulnerability of air transportation to potentially catastrophic accidents. This document provides general guidance only. Shippers should not rely on this document as a substitute for the HMR to determine compliance with regulatory requirements.

## I. Hazardous Materials Identification, Classification, and Communication

Reducing or eliminating the incidence of undeclared hazardous materials in transportation is one of our highest priorities. Undeclared hazardous materials shipments by aircraft are of particular concern because of the risks they pose. We believe a lack of awareness of regulatory requirements and the risks posed by hazardous materials is a contributing factor in undeclared hazardous materials entering the transportation system. As a shipper—that is, a person who offers hazardous materials for transportation—you must be aware of any hazardous characteristics of your products and must know whether a product is regulated as a hazardous material before offering it for transportation. In addition, you should know whether an item or article contains a hazardous material.

Currently, we have a number of non-regulatory initiatives to increase public awareness of the safety problem presented by undeclared shipments of hazardous materials. We are examining a number of alternatives to reduce or eliminate undeclared hazardous materials shipments, such as through better means of detection. Ultimately, however, primary responsibility for ensuring that hazardous materials are identified and declared in accordance with the applicable regulations rests with the shipper.

### *Classification and Hazard Communication*

Because you as a shipper perform critical functions in preparing hazardous materials for transportation, you have the greatest opportunity to improve transportation safety. You may offer a hazardous material for transportation only when it is properly classed and described in accordance with parts 172 and 173 of the HMR, or international regulations such as the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), as permitted in Part 171 of the HMR. The § 172.101 Hazardous Material Table (HMT) lists the most commonly transported materials and articles by name, or by a generic alternative when no specific name is listed. Some hazardous materials are prohibited for transportation. Others, such as most explosives, self-reactive substances, and organic peroxides, require the approval of the Associate Administrator for Hazardous Materials Safety before they may be offered or transported. However, for most hazardous materials, you are responsible for determining the appropriate hazard class and shipping description. This information determines the appropriate packaging and hazard communication requirements such as package marking, labels, and shipping documentation, including emergency response information.

## II. General Packaging Requirements

Selection and use of the appropriate packaging for a hazardous material are essential to ensuring that a hazardous material is not released during transportation. Only packagings authorized by the HMR may be used to package hazardous materials for transportation. You must ensure that a packaging will retain its contents during temperature variances, changes in atmospheric pressure, vibration, or other conditions that may be encountered during normal conditions of transport.

Section 173.24 of the HMR sets forth general requirements that apply to all packagings and packages used for hazardous materials. Section 173.24a contains additional requirements for non-bulk packagings. These sections of general applicability require you to ensure a packaging is compatible with its lading, properly closed, and meets any additional capability requirements. For example, § 173.24 requires plastic packaging and inner receptacles used for liquids to be capable of withstanding, without failure, the procedure for determining chemical compatibility and rate of permeation prescribed in Appendix B of Part 173. For Packing Group I materials, this procedure must be performed on each plastic packaging or receptacle. In addition, § 173.24a requires all non-bulk packagings to be capable of withstanding the vibration test procedure specified in § 178.608 without rupture or leakage. Section IV of this notice discusses additional

packaging requirements in § 173.27 that apply to packages transported by aircraft.

**III. Requirements for the Use of Packagings Meeting United Nations (UN) Performance Standards**

*UN Standard*

Generally, the HMR specify performance levels for packagings based on the hazardous characteristics posed by the specific hazardous material to be packaged. In the HMR, we have implemented packaging standards based on United Nations Recommendations on the Transport of Dangerous Goods (UN Model Regulations). UN standard packagings (i.e., packagings which conform to both the UN Model Regulations and the HMR) are required for most hazardous materials.

Prior to using a UN standard packaging, you must determine that the packaging has been manufactured, assembled, and marked in accordance with Part 178 of the HMR or national or international regulations based on the UN Model Regulations (see § 173.24(d)(2)). For a UN standard packaging, you must assure that the packaging meets the applicable packing group, specific gravity, gross mass, and pressure requirements. Unless otherwise permitted, you must assemble, fill, close, and offer a package for transportation in the same manner as it was tested. Communication between you and the packaging manufacturer is essential to ensure these conditions are met, and that any specialized instructions relating to package preparation are followed. For liquids, you must know the vapor pressure and specific gravity of the material to be packaged (see § 173.24a(b)(4)). You will generally need to know the design details (e.g., size, shape, and type of material) for cushioning material used, if any, and the number and type (e.g., metal can, plastic bottle), style (e.g., friction lid, narrow mouth screw top, wide mouth jar), closure details (e.g., material, size, and liner or gasket design (if required)), and position of any inner receptacles as tested in that particular design type.

You should have a copy of the packaging manufacturer's notification to its customers (see 49 CFR 178.2(c)) and complete the assembly and closure of the package in the manner specified in the notification. Closure of the packaging in the same manner as tested and as specified in the manufacturer's notification is essential to ensuring that it conforms to the requirements of § 173.24 under conditions normally incident to transportation. We strongly recommend that you maintain copies of both the packaging design test report and the notification to customer to ensure that the packaging conforms to applicable requirements. You may also need this information if you reoffer a previously offered package of hazardous material.

For combination UN standard packagings, inner receptacles must conform to the general packaging requirements of §§ 173.24 and 173.24a, discussed in Section II above. Inner packagings must be adequately secured and cushioned within the outer packaging to prevent breakage or leakage and to control the movement of inner packagings within the outer packaging under conditions normally incident to transportation. Except as otherwise permitted under § 178.601 variations, you must close a package in accordance with closure instructions provided by the packaging manufacturer. Design tested components of a combination packaging may vary as permitted under § 178.601. When using a variation, you must ensure that an equivalent level of performance is maintained and you should document how such equivalence was determined. For example, under the selective testing variations in § 178.601(g)(1), Variation 1 allows inner packagings of a tested design to be replaced with inner packagings of equivalent or smaller size without further testing provided an equivalent level of performance is maintained. You must, however, be able to fully ascertain that the varied inner packagings are equally effective as the tested inner packagings they replace; otherwise, the packaging is considered a new packaging and subject to design qualification testing.

*Packaging Reuse*

If you intend to reuse a packaging or receptacle you must ensure the packaging continues to conform to all applicable HMR requirements. This includes closure devices and cushioning materials. Before a packaging is reused, it must be inspected to assure it is free from incompatible residue, leaks, or other damage that reduces its structural integrity. Packagings that show any evidence of such damage must be reconditioned in accordance with § 173.28(c) prior to reuse. Non-bulk packagings made of paper, plastic film, or textile are not authorized for reuse.

Single or composite UN standard packagings intended to contain liquids are subject to the leakproofness test prescribed in § 178.604 and must be leakproofness tested before reuse. As prescribed in § 173.28(b)(2)(i), packagings must be tested with air using an internal air pressure (gauge) of at least 48 kPa (7.0 psi) for Packing Group I and 20 kPa (3.0 psi) for Packing Group II and Packing Group III. The packaging must be marked with the letter ''L'', the name and address or symbol of the person conducting the test, and the last two digits of the year the test was conducted to indicate successful completion of the leakproofness test.

Metal and plastic drums and jerricans used as single packagings or as the outer packagings of composite packagings may be reused only when they are permanently marked (e.g., embossed) in millimeters with the nominal (for metal packagings) or minimum (for plastic packagings) thickness of the packaging material, as required by §§ 173.28 and 178.503(a)(9). Under § 173.28(b)(5), plastic inner receptacles of composite packagings must have a minimum thickness of 1.0 mm (0.039 inch) if reused. Metal or plastic packagings that do not conform to minimum thickness requirements may not be reused.

*Packaging Maintenance and Recordkeeping*

Packagings manufactured to a UN standard must be design-qualified. This means the design must be tested (design qualification tests) to meet a particular standard. Once a packaging has been tested, it is certified by marking it to identify which performance standard it meets, where and when it was manufactured, and by whom. Identical packagings may be manufactured until periodic retesting is due. Single and composite non-bulk packaging designs must be retested successfully at least once every 12 months. Combination packaging designs must be retested successfully at least once every 24 months.

The term ''manufacturer'' means the person certifying or taking responsibility for assuring that the packaging meets the standard to which it is marked. This may not necessarily be the person who produces the packaging or the person who tests the packaging. A person who certifies a packaging may be a self-certifying shipper, a box manufacturer, or a third party testing lab. The person certifying the packaging is responsible for the integrity of the packaging and for ensuring the packaging meets the performance requirements of the HMR.

Any person certifying a packaging, and each subsequent distributor of that packaging, must notify in writing each person to whom that packaging is transferred of all requirements of Part 178 not met at the time the packaging is transferred. Such notification must

include the type and dimensions of any closures, including gaskets, needed to satisfy performance test requirements. This notification includes instructions on how to assemble and close each packaging so the user may be assured that the packaging will perform to the standard to which it is marked. A copy of the written notification must be retained by the packaging manufacturer for at least one year from the date it is issued, and copies of all written notifications must be made available for inspection by representatives of DOT.

**IV. Additional Packaging Requirements for Air Shipments**

If you offer hazardous materials for transportation by aircraft, you must ensure that all of the additional requirements applicable to air transport are met. Because of the risks posed by leaking hazmat packages in air transport, you must exercise exceptional diligence and attention to detail when preparing packagings. For example, because temperatures can range from −40 °C to 55 °C (−40 °F to 130 °F), sufficient ullage (outage) must be maintained in receptacles containing liquids to ensure the structural integrity of the package while transported. Reduced external pressure caused by altitude variances can result in package failure if inferior, untested, or improper packagings containing liquids are transported. Extreme care must be exercised when hazardous materials have been packaged by others and are consolidated or reshipped. You must verify that the package is eligible for air transport.

*General Packaging Requirements*

All packagings offered for air transport must conform to the requirements prescribed in § 173.27 of the HMR. These requirements are in addition to those in §§ 173.24 and 173.24a. For example, a Packing Group III material of Class 4, 5, or 8 offered for air transport must be packaged in packages meeting the Packing Group II performance level. In addition, § 173.27 prescribes pressure requirements for packagings; package closure requirements; the use of absorbent materials; inner receptacle quantity limits and pressure capabilities; and additional labeling for packages requiring transport aboard cargo-only aircraft.

*Inner Packaging Requirements*

Tables 1 and 2 of § 173.27 prescribe the maximum net capacity of inner packagings contained within a combination packaging that may be offered for transport aboard an aircraft. Columns 9A and 9B of the HMT specify individual package quantity limits or forbid transportation by passenger-carrying or cargo-only aircraft, respectively. Unless otherwise specified, the individual package quantity limitations in columns 9A and 9B of the HMT are ''net'', that is, the quantity of hazardous materials in the completed package. When ''gross'' is specified, the individual package limitation is the gross mass (i.e., packaging and its contents) allowed per package. For articles or devices specifically listed by name, the net quantity limit applies to the entire article or device, less packaging and packaging materials.

*Pressure Differential Capability*

You should not use a packaging for transportation by aircraft unless the packaging meets the pressure requirements and is closed in a manner that ensures that it will be capable of resisting pressure changes throughout transportation. All packagings intended to contain liquids must be capable of withstanding, without leakage, an internal gauge pressure of at least 75 kPa (11 psig) for liquids in Packing Group III of Class 3 or Division 6.1 or 95 kPa (14 psig) for all other liquids, or a pressure related to the vapor pressure of the liquid to be conveyed, whichever is greater (see § 173.27(c)). This requirement also applies to liquids excepted from specification packaging, such as limited quantities and consumer commodities. Although not currently required, we recommend that you perform pressure tests on sample receptacles to ensure conformance with the capability standard. Liquids contained in inner receptacles that do not meet the minimum pressure requirements in § 173.27(c) may be overpacked into receptacles that do meet the pressure requirements. A single packaging, or any packaging subject to hydrostatic pressure testing under § 178.605, must have a marked test pressure of not less than 250 kPa for liquids in Packing Group I, 80 kPa for liquids in Packing Group III of Class 3 or Division 6.1, and 100 kPa for other liquids.

*Closures*

Packaging failures in air transportation often involve loose closures. Stoppers, corks, or other such friction-type closures must be held securely, tightly and effectively in place by positive means (see § 173.27(d)). A screw-type closure on any packaging must be secured to prevent the closure from loosening due to vibration or substantial change in temperature. A secured closure should incorporate a secondary means of maintaining a seal, such as a shrink-wrap band or heat sealed liner. You must ensure that replacement closures or inner packagings other than those originally tested (e.g., caps or bottles from a different vendor) conform to the pressure requirements in § 173.27 (c)(1) and (c)(2).

*Absorbent Material*

Except as otherwise provided, liquids in Packing Group I or II of Class 3, 4, 5, 6, or 8, when in glass or earthenware inner packagings, must be packaged with absorbent material that will not react dangerously with the liquid as prescribed in § 173.27(e). In addition, where a package requiring absorbent material is not liquid-tight, a means of containing the liquid must be used. You may accomplish this by using a leakproof liner, plastic bag, or other equally efficient means of containment. It should be noted that, while not having official standing under the HMR, the majority of air carriers only accept hazardous materials packaged in conformance with the International Air Transport Association's Dangerous Goods Regulations (IATA DGR). Currently, the IATA DGR require all liquids in Class 3, 4, or 8, or in Division 5.1, 5.2, or 6.1, to be provided with a means of containing the liquid in the event of leakage when packed in an outer package that is not leak-tight. The addition of a liner or similar form of containment to a previously tested packaging design generally would not constitute a different packaging, requiring new design qualification testing, provided the liner does not compromise the integrity of the original tested design type (such as affecting the closure or necessitating a change in the manner of assembly of the package).

**V. Transportation Security**

In the wrong hands, certain hazardous materials may pose significant security threats, particularly those that may be used as weapons of mass destruction. Persons who offer, transport, or store hazardous materials in transit should review their security measures and make any necessary adjustments to ensure the security of hazardous materials shipments. On February 14, 2002, we published a notice in the **Federal Register** (67 FR 6963) advising hazardous materials shippers and carriers of voluntary measures to enhance the security of hazardous materials shipments during transportation. The notice addresses personnel, facility, and en route security issues, and includes contact points for

obtaining additional, more detailed information. These possible actions are not government regulations or mandates. However, we strongly suggest that shippers and carriers consider implementation of security measures that are appropriate to their industry and operations. There are certain cargo security regulations already in place, such as the Federal Aviation Administration's Indirect Air Carrier Security Program set forth under 14 CFR part 109.

**VI. Training of Hazmat Employees**

We estimate that over 85 percent of all hazardous materials incidents are caused by human error. Insufficient function-specific training of hazmat employees has been identified as a major contributor in hazmat related incidents. Before any hazmat employee performs a function subject to the HMR, that person must be trained in the performance of that function. Effective training of hazmat employees reduces the potential for incidents and accidents. Training is essential for the protection of people, property, and the environment.

Training is a systematic program (consistent approach, testing, and documentation) that ensures a hazmat employee has knowledge of hazardous materials and the HMR, and can perform assigned hazmat functions properly. The terms ''hazmat employee'' and ''hazmat employer'' are defined in detail in § 171.8. Stated briefly, a hazmat employee is anyone who directly affects hazardous material transportation safety. A hazmat employer is anyone who uses employees in connection with transporting hazardous materials in commerce, causing hazardous materials to be transported, or manufacturing or offering packagings as authorized for use in transportation of hazardous materials. Each hazmat employee must be initially trained, and periodically retrained every three years in three areas: (1) General awareness/familiarization training designed to provide familiarity with requirements of the HMR and to enable the employee to recognize and identify hazardous materials; (2) function-specific training concerning requirements of the HMR which are specifically applicable to the functions the employee performs; and (3) safety training concerning emergency response information, measures to protect the employee from the hazards posed by materials, and methods and procedures for avoiding accidents.

**VII. Obtaining Federal Assistance**

You may obtain information on hazardous material incidents, most of which involve ''spills'' (the unintentional release of a hazardous material during transportation), from RSPA's database which is accessible from our website at *http://hazmat.dot.gov.* You can search this database to make sure that you are aware of incidents involving your shipments. To ensure that shippers are informed of incidents involving their shipments, RSPA has proposed to amend the HMR to require a carrier to notify the shipper of any incident required to be reported to RSPA. (*See* RSPA's notice of proposed rulemaking published in the **Federal Register** on July 3, 2001; 66 FR 35155.)

Our Hazardous Materials Information Center (HMIC) may be reached toll-free at 800–467–4922. The HMIC provides informal guidance concerning requirements of the HMR. The HMIC is staffed with information specialists from 9 am until 5 pm, Eastern time, Monday through Friday, except Federal holidays. When the information line is not staffed, callers may leave a recorded message, which will be answered the next business day. This toll-free number may also be used to voluntarily report suspected violations of the HMR. Reported violations of hazardous materials regulations are forwarded to the Office of Hazardous Materials Enforcement or the appropriate DOT modal administration for appropriate action.

Modal-specific information may be obtained directly from DOT's modal administrations (*i.e.,* the Federal Aviation Administration, the Federal Motor Carrier Safety Administration, the Federal Railroad Administration, the U.S. Coast Guard, and the Transportation Security Administration) at their Washington, DC headquarters or field offices.

You may request an informal written interpretation, a regulatory clarification, a response to a question, or offer an opinion concerning hazardous materials transportation by submitting a written request to the RSPA Office of Hazardous Materials Standards (DHM–10), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

We have a variety of training materials and compliance guides available in limited quantities to interested persons. Information on those publications and related materials is available through our website at http://hazmat.dot.gov/. In addition our website provides: (1) A complete copy of the HMR; (2) recently published rulemakings; (3) hyperlinks to government and private vendors who offer training, consulting and other contracted services; (4) our multi-modal training seminar schedule; (5) complementary on-line training modules; and (6) informal interpretations and guidance documents.

Issued in Washington, DC, on May 6, 2002.

**Frits Wybenga,**

*Deputy Associate Administrator for Hazardous Materials Safety.*

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## DEPARTMENT OF TRANSPORTATION

## Federal Motor Carrier Safety Administration

## 49 CFR Part 385

**[Docket No. FMCSA–2001–11061]**

**RIN 2126–AA59**

## New Entrant Safety Assurance Process

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Interim Final Rule (IFR); request for comments.

**SUMMARY:** The FMCSA establishes minimum requirements for new entrant motor carriers to ensure that they are knowledgeable about applicable Federal motor carrier safety standards. After ensuring that they are knowledgeable through the application process, the new entrants will operate for 18 months in which time they must pass a safety audit in order to receive permanent DOT registration.

**DATES:** This rule is effective January 1, 2003. Comments must be received on or before July 12, 2002.

**ADDRESSES:** You can submit comments by mail or by delivery service to the U.S. DOT Docket Management Facility (DMS), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, and your signed written comments must refer to the docket number appearing at the top of this document. Comments received from the public will become part of this docket and will be available for inspection and copying at the DMS between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Those desiring acknowledgement of receipt of your comments should include a self-addressed stamped envelope or postcard, or after submitting comments electronically, print the acknowledgment page.

Comments may also be submitted on the Internet by using the universal resource locator (URL) at: *http://dmses.dot.gov/submit*, or by fax to (202) 493–2251. Internet users may view all comments received by the DMS on the Internet at: *http://dms.dot.gov*. Please follow the instructions online for more information and help. In addition, an electronic copy of this document may be downloaded by accessing **Federal Register** publications through the Government Printing Office (GPO) Access service (*http://www.access.gpo.gov/nara*).

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FMCSA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Minor, 202–366–4009, Acting Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration (MC–PSD), 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

This rule is being published as an interim final rule and is being made effective on January 1, 2003. A notice of proposed rulemaking does not precede this rule.

In the fiscal year 2002 Department of Transportation Appropriations Act (Public Law 107–87; December 18, 2001), Congress directed that as a condition of processing applications of Mexico-domiciled motor carriers for authority to operate beyond the commercial zones and municipalities located along the U.S.-Mexico border, the FMCSA must issue an interim final rule to ensure that new entrant carriers are knowledgeable about Federal safety standards. The FMCSA is making the effective date of the rule January 1, 2003 in order to allow the agency sufficient time to put in place the necessary resources to conduct the safety audits prescribed by the rule. Additionally, the FMCSA will need the funds generated by its final fee structure under the Motor Carrier Replacement Information/Registration System to run the program. It expects to complete that rulemaking by the January 2003 effective date.

Because of Congress' direction, the FMCSA finds that there is good cause that notice and comment are contrary to the public interest under 5 U.S.C. 553(b)(3)(B).

## Background

On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159). Section 210(a) of MCSIA, now codified as 49 U.S.C. 31144(f), requires the Secretary of Transportation to establish regulations specifying minimum requirements for applicant motor carriers seeking federal interstate operating authority, including a requirement that new entrants undergo a safety audit within the first 18 months of operations.

Although operating authority has generally been construed in the past to mean registration of for-hire carriers subject to the jurisdiction transferred from the Interstate Commerce Commission following enactment of the ICC Termination Act of 1995 (ICCTA) (Public Law 104–88) (referred to herein as authorized for-hire motor carriers), the FMCSA believes section 210 extends this concept to all carriers subject to Federal safety jurisdiction. In other words, all new entrants, regardless of whether they need to register with the FMCSA under 49 U.S.C. 13901, will be required to meet certain minimum safety standards in order to continue operating in interstate commerce during and after the 18-month period following their receipt of a USDOT number.

The FMCSA intends to improve the safety performance of new entrants by providing educational and technical assistance to new carriers as they begin their new business. The intent of the safety audit and 18-month monitoring period is to provide new carriers the opportunity to understand their safety obligations under the Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs). The safety audit will consist of a review of the new entrant's safety data, a review of requested motor carrier documents, and an interview session with the motor carrier by an individual certified under FMCSA regulations to perform safety audits. The objective of the safety audit is both to educate the carrier on compliance with the FMCSRs and HMRs and to determine areas where the carrier might be deficient in terms of compliance. Areas covered include the qualification of drivers; driving a commercial motor vehicle; hours of service; vehicle inspection, repair, and maintenance; transporting and marking hazardous materials; controlled substances and alcohol use and testing; commercial driver's license standards; and financial responsibility. When presented with evidence that carriers cannot or will not exercise basic safety management controls, the FMCSA will require corrective action. If the necessary corrective action is not taken, a carrier will be denied the privilege of operating in interstate commerce.

However, the safety enforcement remedies addressed in the rule are not the exclusive enforcement tools available to the agency to ensure safe operations by new entrants. New entrant carriers are subject, like any other carrier operating in the United States, to all Federal Motor Carrier Safety Regulations and operating requirements. The agency can and will, where necessary, apply the full range of enforcement actions to new entrant carriers. These include, but are not limited to, compliance reviews, civil penalties, and revocation of new entrant registration for serious safety violations.

Currently, an applicant who wishes to begin commercial vehicle operations in interstate commerce is required to submit the Motor Carrier Identification Report, Form MCS–150, to FMCSA before commencing operations. Additionally, unless providing transportation exempt from ICCTA registration requirements, a for-hire motor carrier must also apply for the appropriate operating authority, make the necessary administrative filings as required by the ICCTA, and pay a fee.

This regulation establishes new minimum requirements for all applicant motor carriers domiciled in the United States and Canada seeking to operate in interstate commerce for the first time. Applicants will be provided educational and technical assistance material to assist them in complying with the FMCSRs and applicable HMRs, and will be required to certify that they are knowledgeable about, and will comply, with these regulations. This will help ensure they are knowledgeable about applicable Federal motor carrier safety standards before being granted ''new entrant registration'' that will continue for a minimum of 18 months. During the 18-month period, FMCSA will evaluate the new entrant's safety management practices through a safety audit and monitor its on-road performance prior to granting the new entrant permanent registration.

Section 210(b) of the MCSIA required the Secretary to consider establishing a proficiency examination as well as other requirements to ensure applicants understand applicable safety regulations

before being granted operating authority. The FMCSA is not requiring a proficiency examination because it believes that the educational and technical assistance materials provided to the new entrants and the safety certifications on the required application forms will demonstrate the new entrants understand applicable safety regulations.

The new MCS–150A form requires the new entrant to certify that it has a system(s) in place to ensure compliance with applicable requirements covering driver qualifications, hours of service, controlled substance and alcohol testing, vehicle condition, accident monitoring, and hazardous materials transportation. The certification reminds the new entrant of its statutory and regulatory responsibilities, which if neglected or violated, may subject the applicant to civil penalties and/or lead to the revocation of the new entrant registration.

Motor carriers domiciled in Mexico seeking to operate in the United States will not be subject to this rule. The FMCSA adopted separate application and safety monitoring procedures for Mexico-domiciled carriers on March 19, 2002, (67 FR 12652, 67 FR 12702, and 67 FR 12758). The FMCSA believes it is necessary to maintain separate procedures for Mexico-domiciled carriers because of: (1) The differences between the Mexican and U. S. regulatory systems, which present unique circumstances in ensuring compliance with the FMCSRs and HMRs by Mexico-domiciled carriers; and (2) the unique requirements imposed on certain Mexico-domiciled carriers by the Department of Transportation Appropriations Act. These differences are discussed in detail in the preambles to the notices of proposed rulemakings for the Mexican carrier rules published on May 3, 2001 (66 FR 22238, 22371 and 22415).

Under the new requirements, an applicant may request an application package by contacting the FMCSA website (*www.fmcsa.dot.gov*); or by contacting the FMCSA's Washington, DC headquarters by mail, fax or telephone. Applicants are strongly encouraged to complete the applications on line. The application package will contain the following:

1. Educational and technical assistance material regarding the requirements of the FMCSRs and HMRs, if applicable.

2. The Form MCS–150, The Motor Carrier Identification Report.

3. The Form MCS–150A, Safety Certification for Applications for U.S. DOT Number. A copy of Form MCS–150A is available in the docket described above under **ADDRESSES**.

For-hire motor carriers are also required to complete the application forms OP–1 or OP–1(P), as appropriate, and must submit them to the FMCSA at the same time as the Forms MCS–150 and MCS–150A. The FMCSA is planning to update these forms in the future to implement the provisions of the ICC Termination Act of 1995 (ICCTA).

The educational and technical assistance package will consist of material designed to assist the applicant in complying with the FMCSRs and establishing good safety management practices. It will include information on driver qualifications; controlled substances and alcohol use testing; commercial drivers licenses; minimum levels of financial responsibility; accident reports; requirements applicable to the driving of motor vehicles; vehicle inspection, repair and maintenance; hours of service and records of duty status of drivers; and requirements applicable to the transportation of hazardous materials.

Following completion of the application forms, FMCSA will register the new entrant and assign a United States Department of Transportation (USDOT) number. For-hire motor carriers, unless providing transportation exempt from ICCTA registration requirements, are required to obtain operating authority prior to commencing operations. The new entrant registration begins with the issuance of the USDOT number and will continue for 18 months. During the 18-month new entrant registration period, the new entrant will be required to undergo a safety audit designed to evaluate the adequacy of its safety management practices and to offer guidance and assistance in enhancing those practices. The agency is treating the term ''safety audit,'' which is used in Sec. 211 of the MCSIA regarding the certification of an individual under FMCSA regulations to perform safety audits, as equivalent to the ''safety review'' mandated by Sec. 210 of MCSIA. The statutory purpose of a ''safety review'' and a ''safety audit'' appears to be very similar. In addition, the term ''safety audit'' avoids any possible confusion with the safety reviews previously conducted by the agency, which were discontinued on September 30, 1994.

The safety audit will generally occur at the new entrant's place of business, upon reasonable notice to the new entrant, which will include notice of what the audit will consist of and when it will take place. The safety audit will be an assessment of the adequacy of the new entrant's basic safety management controls. It will include, but not be limited to, a review of selected carrier records and operational practices, e.g., driver qualification records, driver records of duty status, and vehicle maintenance files. The safety audit is different than a compliance review in that it focuses on providing safety management and technical assistance and will not result in a safety fitness determination, i.e., a safety rating of satisfactory, conditional, or unsatisfactory. Safety ratings are assigned only after a compliance review. However, the safety audit could result in the new entrant having its new entrant registration revoked if it is found to have inadequate basic safety management controls and fails to take corrective action required by the FMCSA. Appendix A—Explanation of Safety Audit Evaluation Criteria will be used to determine the adequacy of the new entrant's basic safety management controls.

The FMCSA is interested in comments on the advisability of conducting some safety audits at alternate locations. This would enable the agency to provide educational and technical assistance to a number of new entrants at one time and also perform the audits of the systems and records the new entrants will be required to provide. The FMCSA also invites comments on whether it is appropriate for private contractors certified by the FMCSA to conduct safety audits.

Following completion of the safety audit, the auditor will review the findings with the new entrant. If the safety audit reveals that the carrier has basic safety management controls in place that are functioning adequately, the FMCSA will notify the new entrant in writing within 45 days that it has successfully met the safety audit requirements. However, the new entrant registration will remain in place and the carrier's performance will remain closely monitored by the FMCSA until the end of the 18-month period. If a safety audit has not been conducted on a new entrant, through no fault of the carrier, the new entrant designation will continue until such time as a safety audit is conducted. However, a new entrant who has not undergone a safety audit within the 18 months because it has refused to allow the FMCSA to conduct the safety audit may have its new entrant registration revoked ten days after receiving notice from the FMCSA.

The FMCSA anticipates that the safety management practices of the large

majority of new entrants will prove to be adequate because of the combined effect of: (1) Providing educational material to the new entrant in the application process; (2) requiring the new entrant to certify that it understands and that it will comply with the FMCSRs; and (3) providing notice to the new entrant of the content of the safety audit. However, in those cases in which the safety audit reveals that the new entrant's safety management practices are inadequate, the FMCSA will notify the new entrant that it is required to take action to improve its practices. The new entrant will have 60 days to take the necessary remedial action, unless it transports passengers or carries hazardous materials, in which case it will have 45 days. These time periods are consistent with the period currently provided to motor carriers to improve proposed safety ratings following a compliance review. Failure by the carrier to make the necessary changes to remedy inadequate basic safety management controls will result in revocation of its new entrant registration and imposition of an out-of-service order (OOS) prohibiting operations in interstate commerce. The FMCSA is interested in comments on the resource cost to the economy of denying permanent registration.

If a new entrant provides the FMCSA with a written response demonstrating that corrective action likely to achieve compliance with the requirements of the FMCSRs and applicable HMRs has been taken, and the FMCSA determines the new entrant's basic safety management controls are adequate, the new entrant will be notified in writing that its safety management practices are acceptable and that its new entrant registration will remain in place until the end of the 18-month period.

The FMCSA believes that in most cases in which corrective action is needed, the remedial action will be taken in the required time frame. However, in those cases in which the new entrant does not take any remedial action, or takes action unlikely to improve its safety performance to an acceptable level, the FMCSA will initiate a proceeding to revoke the new entrant registration.

The FMCSA Division Administrators or State Directors will make the initial determination about the adequacy of a new entrant's basic safety management controls and whether necessary corrective action has been taken. The Field Administrator of the appropriate FMCSA Service Center will conduct administrative review of this decision.

A new entrant may request the FMCSA to conduct an administrative review if it believes the FMCSA has committed an error in determining that its basic safety management controls are inadequate. The new entrant's request must explain the error it believes the FMCSA committed in its determination and include a list of all factual and procedural issues in dispute. In addition, the new entrant must include any information or documents that support its argument. Following the administrative review, the FMCSA will notify the new entrant of its decision, which will constitute the final action of the agency.

A new entrant whose registration has been revoked is prohibited from operating a CMV in interstate commerce and may not reapply for new entrant registration sooner than 30 days after the date of revocation. A new entrant reapplicant will be required to demonstrate to the FMCSA's satisfaction that it has corrected the deficiencies that resulted in revocation and otherwise has in place safety management systems that will function effectively.

The rule provides that at the end of the 18-month period, if the new entrant has successfully met the requirements of the safety audit and is not currently under a notice from the FMCSA to remedy its safety management practices, its DOT registration will become permanent. Thereafter, it will be treated like any other motor carrier. If the carrier is under a notice to remedy its safety management practices, its new entrant designation will continue until FMCSA determines the new entrant has implemented actions necessary to achieve adequate safety management practices.

## Rulemaking Analysis and Notices

*Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). It has been reviewed by the Office of Management and Budget. The subject of requirements for new entrant motor carriers will likely generate considerable public interest within the meaning of Executive Order 12866. We have classified the rule as significant because of the high level of public and congressional interest in the new entrant safety assurance process. OMB has designated the rule as economically significant. A regulatory evaluation has been prepared and placed in the docket.

A series of analyses and reports have demonstrated that new motor carriers are less likely to comply with safety regulations, and are more likely to be involved in crashes, than established motor carriers. In response to this, Congress directed the FMCSA to develop a program to ensure the safety of new entrants.

The centerpiece of the new entrant program is the safety audit, which will be performed on all new entrants within 18 months of their registration. Individuals certified under the FMCSA regulations will perform these audits. The FMCSA anticipates a volume of approximately 40,000 new entrant safety audits each year. A copy of the complete regulatory evaluation is available in the docket described above under **ADDRESSES.**

*Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FMCSA has considered the effects of this regulatory action on small entities and determined that such entities would not be adversely affected by this rule. We therefore certify that it would not have a significant impact on a substantial number of small entities.

*Executive Order 12988 (Civil Justice Reform)*

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

*Executive Order 13045 (Protection of Children)*

We have analyzed this rule under Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks.'' This rule does not concern an environmental risk to health or safety that would disproportionately affect children.

*Executive Order 12630 (Taking of Private Property)*

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

*Executive Order 13132 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that this action does

not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. It will not impose additional costs or burdens on the States. This action will not have a significant effect on the States' ability to execute traditional State governmental functions. To the extent that States incur costs for conducting these safety audits, they will be reimbursed with federal funds under the Motor Carrier Safety Assistance Program (MCSAP). Since the MCSAP is an ''80/20'' program, FMCSA would reimburse the States for 80% of the costs incurred in conducting safety audits.

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. An analysis of this interim final rule has been made by the FMCSA, and it has been determined that it will affect a currently-approved information collection covered by OMB Control No. 2126–0013 (Motor Carrier Identification Report). Information collection 2126–0013, with an annual burden of 68,250 hours, expires on May 31, 2004.

In addition to completing form MCS–150 (Motor Carrier Identification Report), this interim final rule will also require new entrants to complete a new supplemental form, entitled Safety Certification for Applications for U.S. DOT Number (MCS–150A). The completion of the supplemental form is the only portion of this interim final rule with PRA implications.

Although the rule also involves two other forms new entrants must complete—the BOC–3 and OP forms, there is no impact on burden hours for those information collections resulting from this rule. The BOC–3 form is covered by 2126–0015 (Designation of Agents, Motor Carriers, Brokers and Freight Forwarders), which expires on November 30, 2004. The OP series forms are covered by 2126–0016 (Revision of Licensing Application Forms of Application Procedures and Corresponding Regulations), which expires on March 31, 2005. However, this rule does not affect the burden hours involved with these two information collections.

The FMCSA estimates that approximately 40,000 new entrants annually will be required to complete this supplemental form (MCS–150A) and that the supplemental form takes approximately 9 minutes to complete. Therefore, we estimate the total annual burden of this interim final rule to be 6,000 burden hours (9 minutes × 40,000, divided by 60 minutes). The new total burden for information collection 2126–0013 would be 74,250 hours (the currently-approved 68,250 hours for completing the MCS–150, plus 6,000 hours for completing the MCS–150A).

We particularly request your comments on whether the collection of information is necessary for the FMCSA to meet its goal of reducing truck crashes, including (1) whether the information is useful to this goal; (2) the accuracy of the estimate of the burden of the information collection; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) 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.

You may submit comments on the *information collection burden* addressed by this interim final rule to the Office of Management and Budget (OMB). The OMB must receive your comments by June 27, 2002. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

*National Environmental Policy Act*

The Federal Motor Carrier Safety Administration (FMCSA) is a new administration within the Department of Transportation (DOT). We are striving to meet all of the statutory and executive branch requirements on rulemaking. The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order is consistent with and reflects the procedures for considering environmental impacts under DOT Order 5610.1C. The FMCSA analyzed this interim final rule under the NEPA and DOT Order 5610.1C. We believe it would be among the type of regulations that would be categorically excluded from any environmental assessment.

*Energy Effects*

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy because it sets standards for new entrant motor carriers and has no direct relation to energy consumption. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

*Unfunded Mandates*

This rule does not impose an unfunded Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*) Any costs incurred by the States are reimbursable under the Motor Carrier Safety Assistance Program (MCSAP). To the extent that States incur costs for conducting these safety audits, they will be reimbursed with federal funds under MCSAP.

**List of Subjects in 49 CFR Part 385**

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements, Safety fitness procedures.

In consideration of the foregoing, Title 49, Code of Federal Regulations, Chapter III, part 385 is amended as set forth below:

## PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 is revised to read as follows:

**Authority:** 49 U.S.C. 113, 504, 521(b), 5113, 31136, 31144, 31148, and 31502; and 49 CFR 1.73.

2. Amend § 385.1 by redesignating paragraph (b) as paragraph (c) and revising it, and by adding new paragraph (b) to read as follows:

**§ 385.1 Purpose and scope.**

* * * * *

(b) This part establishes the safety assurance program for a new entrant motor carrier initially seeking to register with FMCSA to conduct interstate operations. It also describes the consequences that will occur if the new entrant fails to maintain adequate basic safety management controls.

(c) The provisions of this part apply to all motor carriers subject to the requirements of this subchapter, except non-business private motor carriers of passengers.

3. Amend § 385.3 by revising the section heading and adding definitions and acronyms in alphabetical order to read as follows:

**§ 385.3 Definitions and acronyms.**

* * * * *

*CMV* means a commercial motor vehicle as defined in § 390.5 of this subchapter.

* * * * *

*FMCSA* means the Federal Motor Carrier Safety Administration.

*FMCSRs* mean Federal Motor Carrier Safety Regulations (49 CFR parts 350–399).

*HMRs* means the Hazardous Materials Regulations (49 CFR parts 100–178).

*New entrant* is a motor carrier not domiciled in Mexico that applies for a United States Department of Transportation (DOT) identification number in order to initiate operations in interstate commerce.

*New entrant registration* is the registration (US DOT number) granted a new entrant before it can begin interstate operations in an 18-month monitoring period. A safety audit must be performed on a new entrant's operations within 18 months after receipt of its US DOT number and it must be found to have adequate basic safety management controls to continue operating in interstate commerce at the end of the 18-month period.

* * * * *

4. Part 385 is amended by adding a new subpart D to read as follows:

**Subpart D—New Entrant Safety Assurance Program**

Sec.



## Subpart D—New Entrant Safety Assurance Program

**§ 385.301 What is a motor carrier required to do before beginning interstate operations?**

(a) Before a motor carrier of property or passengers begins interstate operations, it must register with the FMCSA and receive a USDOT number. In addition, for-hire motor carriers must obtain operating authority from FMCSA following the registration procedures described in 49 CFR part 365, unless providing transportation exempt from 49 CFR part 365 registration requirements.

(b) This subpart applies to motor carriers domiciled in the United States and Canada.

(c) A Mexico-domiciled motor carrier of property or passengers must register with the FMCSA by following the registration procedures described in 49 CFR part 365 or 368, as appropriate. The regulations in this subpart do not apply to Mexico-domiciled carriers.

**§ 385.303 How does a motor carrier register with the FMCSA?**

A motor carrier may contact the FMCSA by internet (*www.fmcsa.dot.gov*); or Washington, DC headquarters by mail at, FMCSA, 400 7th Street SW., Washington, DC 20590; fax (703) 280–4003; or telephone 1–800–832–5660, and request the application materials for a new entrant motor carrier.

**§ 385.305 What happens after the FMCSA receives a request for new entrant registration?**

(a) The requester for new entrant registration will be directed to the FMCSA Internet website (*www.fmcsa.dot.gov*) to secure and/or complete the application package online.

(b) The application package will contain the following:

(1) Educational and technical assistance material regarding the requirements of the FMCSRs and HMRs, if applicable.

(2) The Form MCS–150, The Motor Carrier Identification Report.

(3) The Form MCS–150A, The Safety Certification for Applications for U.S. DOT Number.

(4) Application forms to obtain operating authority under 49 CFR 365, as appropriate.

(c) Upon completion of the application forms, the new entrant will be issued a USDOT number.

(d) For-hire motor carriers, unless providing transportation exempt from 49 CFR part 365 registration requirements, must also comply with the procedures established in 49 CFR part 365 to obtain operating authority before operating in interstate commerce.

**§ 385.307 What happens after a motor carrier begins operations as a new entrant?**

After a new entrant satisfies all applicable pre-operational requirements, it will be subject to the new entrant safety monitoring procedures for a period of 18 months. During this 18-month period:

(a) The new entrant's roadside safety performance will be closely monitored to ensure the new entrant has basic safety management controls that are operating effectively. An accident rate or driver or vehicle violation rate that is higher than the industry average for similar motor carrier operations may cause the FMCSA to conduct an expedited safety audit or compliance review at any time.

(b) A safety audit will be conducted on the new entrant, once it has been in operation for enough time to have sufficient records to allow the agency to

evaluate the adequacy of its basic safety management controls. This period will generally be at least 3 months.

(c) All records and documents required for the safety audit shall be made available for inspection upon request by an individual certified under FMCSA regulations to perform safety audits.

**§ 385.309 What is the purpose of the safety audit?**

The purpose of a safety audit is to:

(a) Provide educational and technical assistance to the new entrant; and

(b) Gather safety data needed to make an assessment of the new entrant's safety performance and adequacy of its basic safety management controls.

**§ 385.311 What will the safety audit consist of?**

The safety audit will consist of a review of the new entrant's safety management systems and a sample of required records to assess compliance with the FMCSRs, applicable HMRs and related record-keeping requirements as specified in Appendix A of this part. The areas for review include, but are not limited to, the following:

(a) Driver qualification;

(b) Driver duty status;

(c) Vehicle maintenance;

(d) Accident register; and

(e) Controlled substances and alcohol use and testing requirements.

**§ 385.313 Who will conduct the safety audit?**

An individual certified under the FMCSA regulations to perform safety audits will conduct the safety audit.

**§ 385.315 Where will the safety audit be conducted?**

The safety audit will generally be conducted at the new entrant's business premises.

**§ 385.317 Will a safety audit result in a safety fitness determination by the FMCSA?**

A safety audit will not result in a safety fitness determination. Safety fitness determinations follow completion of a compliance review.

**§ 385.319 What happens after the completion of the safety audit?**

(a) Upon the completion of the safety audit, the auditor will review the findings with the new entrant.

(b) If the FMCSA determines that the safety audit discloses that the new entrant has adequate basic safety management controls, the FMCSA will provide the new entrant written notice as soon as practicable, but not later than 45 days after the completion of the safety audit, that it has adequate basic safety management controls. The new entrant's safety performance will continue to be closely monitored for the remainder of the 18-month period of new entrant registration.

(c) If the FMCSA determines that the findings of the safety audit disclose that the new entrant's basic safety management controls are inadequate, it will provide the new entrant written notice, as soon as practicable, but not later than 45 days after the completion of the safety audit, that its USDOT new entrant registration will be revoked and its operations placed out-of-service unless it takes the actions specified in the notice to remedy its safety management practices within:

(1) 45 days of the date of the notice if the new entrant transports passengers in a CMV designed or used to transport 16 or more passengers, including the driver, or transports hazardous materials requiring placarding; or

(2) 60 days of the date of the notice for all other new entrants.

**§ 385.321 What failures of safety management practices disclosed by the safety audit will result in a notice to a new entrant that its DOT new entrant registration will be revoked?**

The failures of safety management practices consist of a lack of basic safety management controls as described in Appendix A of this part and will result in a notice to a new entrant that its DOT new entrant registration will be revoked.

**§ 385.323 May the FMCSA extend the period under § 385.319(c) for a new entrant to take corrective action to remedy its safety management practices?**

(a) If a new entrant that transports passengers in a CMV designed or used to transport 16 or more passengers, including the driver, or transports hazardous materials in quantities requiring placarding, has submitted evidence that corrective actions have been taken pursuant to § 385.319(c) and the FMCSA cannot make a determination regarding the adequacy of the corrective actions within the 45 day period, the period may be extended for up to 10 days at the discretion of the FMCSA.

(b) The FMCSA may extend the 60-day period in § 385.319(c)(2), for up to an additional 60 days provided FMCSA determines that the new entrant is making a good faith effort to remedy its safety management practices.

**§ 385.325 What happens after a new entrant has been notified under § 385.319(c) to take corrective action to remedy its safety management practices?**

(a) If the new entrant provides evidence of corrective action acceptable to the FMCSA within the time period provided in § 385.319(c), including any extension of that period authorized under § 385.323, the FMCSA will provide written notification to the new entrant that its DOT new entrant registration will not be revoked and it may continue operations.

(b) If a new entrant, after being notified that it is required to take corrective action to improve its safety management practices, fails to submit a written response demonstrating corrective action acceptable to FMCSA within the time specified in § 385.319(c), including any extension of that period authorized under § 385.323, the FMCSA will revoke its new entrant registration and issue an out-of-service order effective on:

(1) Day 46 from the date of notification if the new entrant transports passengers in a CMV designed to transport 16 or more passengers, including the driver, or transports hazardous materials in quantities requiring placarding; or

(2) Day 61 from the date of notification for all other new entrants; or

(3) If an extension has been granted under § 385.323, the day following the expiration of the extension date.

(c) The new entrant may not operate in interstate commerce on or after the effective date of the out-of-service order.

**§ 385.327 What happens when a new entrant receives a notice under § 385.319(c) that its new entrant registration will be revoked and it believes the FMCSA made an error in its determination?**

(a) If a new entrant receives a revocation notice, it may request the FMCSA to conduct an administrative review if it believes the FMCSA has committed an error in determining that its basic safety management controls were inadequate.

(1) The request must be made to the Field Administrator of the appropriate FMCSA Service Center.

(2) The request must explain the error the new entrant believes the FMCSA committed in its determination.

(3) The request must include a list of all factual and procedural issues in dispute, and any information or documents that support the new entrant's argument.

(b) The new entrant should submit its request no later than 15 days from the date of the notice of the inadequacy of its basic safety management controls. Submitting the request within 15 days will allow the FMCSA to issue a written decision before the prohibitions outlined in § 385.319(c) take effect. Failure to petition within this 15-day

period may prevent the FMCSA from issuing a final decision before the prohibitions take effect.

(c) The FMCSA may request that the new entrant submit additional data and attend a conference to discuss the issue(s) in dispute. If the new entrant does not attend the conference, or does not submit the requested data, the FMCSA may dismiss the new entrant's request for review.

(d) The FMCSA will complete its review and notify the new entrant in writing of its decision within 30 days after receiving a request for review from a hazardous materials or passenger new entrant and within 45 days from any other new entrant.

(e) A new entrant must make a request for an administrative review within:

(1) 90 days of the date when it was initially notified under § 385.319(c) that its basic safety management controls were inadequate; or

(2) 90 days after it was notified that its corrective action under § 385.319(c) was insufficient and its basic safety management controls remain inadequate.

(f) The Field Administrator's decision constitutes the final agency action.

(g) Notwithstanding this subpart, a new entrant is subject to the suspension and revocation provisions of 49 U.S.C. 13905 for violations of DOT regulations governing motor carrier operations.

**§ 385.329 May a new entrant that has had its U.S. DOT registration revoked and its operations placed out of service (OOS) reapply?**

(a) A new entrant whose U.S. DOT registration has been revoked and whose operations have been placed OOS by the FMCSA may reapply under § 385.301 no sooner than 30 days after the date of revocation.

(b) The motor carrier will be required to initiate the process from the beginning, and will be required to demonstrate that it has corrected the deficiencies that resulted in revocation of its registration and otherwise will ensure that it will have adequate basic safety management controls.

**§ 385.331 What happens if a new entrant operates a CMV after having been issued an order placing its interstate operations out of service (OOS)?**

If a new entrant operates a CMV in violation of an out-of-service (OOS) order and § 385.325(b), it is subject to the penalty provisions in 49 U.S.C. 521(b)(2)(A), not to exceed $10,000 for each offense.

**§ 385.333 What happens at the end of the 18-month safety monitoring period?**

(a) If a safety audit has been performed within the 18-month period, and the new entrant is not currently subject to an order placing its operations out-of-service under § 385.325(b) or under a notice ordering it to take specified actions to remedy its safety management controls under § 385.319(c), the FMCSA will remove the new entrant designation and notify the new entrant in writing that its registration has become permanent. Thereafter, the FMCSA will evaluate the motor carrier on the same basis as any other carrier.

(b) If a new entrant is determined to be ''unfit'' after a compliance review its new entrant registration will be revoked. (See § 385.13)

(c) A new entrant that has reached the conclusion of the 18-month period but is under an order to correct its safety management practices under § 385.319(c) will have its new entrant registration removed following FMCSA's determination that the specified actions have been taken to remedy its safety management practices. The motor carrier will be notified in writing that its new entrant designation is removed and that its registration has become permanent. Thereafter, the FMCSA will evaluate the motor carrier on the same basis as any other carrier.

(d) If a safety audit or compliance review has not been performed by the end of the 18-month monitoring period through no fault of the motor carrier, the carrier will be permitted to continue operating as a new entrant until a safety audit or compliance review is performed and a final determination is made regarding the adequacy of its safety management controls. Based on the results of the safety audit or compliance review, the FMCSA will either:

(1) Remove the new entrant designation and notify the new entrant in writing that its registration has become permanent; or

(2) Revoke the new entrant registration in accordance with § 385.319(c).

**§ 385.335 If the FMCSA conducts a compliance review on a new entrant, will the new entrant also be subject to a safety audit?**

If the FMCSA conducts a compliance review on a new entrant that has not previously been subject to a safety audit and issues a safety fitness determination, the new entrant will not have to undergo a safety audit under this subpart. However, the new entrant will continue to be subject to the 18-month safety-monitoring period prior to removal of the new entrant designation.

**§ 385.337 What happens if a new entrant refuses to permit a safety audit to be performed on its operations?**

(a) If a new entrant refuses to permit a safety audit to be performed on its operations, the FMCSA will provide the carrier with written notice that its registration will be revoked and its operations placed out of service unless the new entrant agrees in writing, within 10 days from the service date of the notice, to permit the safety audit to be performed. The initial refusal to permit a safety audit to be performed may subject the new entrant to the penalty provisions in 49 U.S.C. 521(b)(2)(A).

(b) If the new entrant does not agree to undergo a safety audit as specified in paragraph (a) of this section, its registration will be revoked and its interstate operations placed out of service effective on the 11th day from the service date of the notice issued under paragraph (a) of this section.

5. Amend appendix A to part 385 as follows:

a. In section I. General, revise paragraph (b);

b. In section II. Source of the Data for the Safety Audit Evaluation Criteria, revise the introductory text of paragraph (b);

c. In section IV. Overall Determination of the Carrier's Basic Safety Management Controls, designate the first paragraph as paragraph (a) and revise it, designate the second paragraph as paragraph (b), and designate the last paragraph as paragraph (c) and revise it.

The revisions read as follows:

## Appendix A to Part 385—Explanation of Safety Audit Evaluation Criteria

**I. General**

* * * * *

(b) To meet the safety standard, a motor carrier must demonstrate to the FMCSA that it has basic safety management controls in place which function adequately to ensure minimum acceptable compliance with the applicable safety requirements. A ''safety audit evaluation criteria'' was developed by the FMCSA, which uses data from the safety audit and roadside inspections to determine that each owner and each operator applicant for new entrant registration, provisional operating authority, or provisional Certificate of Registration has basic safety management controls in place. The term ''safety audit'' is the equivalent to the ''safety review'' required by Sec. 210. Using ''safety audit'' avoids any possible confusion with the safety reviews previously conducted by the agency that were discontinued on September 30, 1994.

* * * * *

**II. Source of the Data for the Safety Audit Evaluation Criteria**

* * * * *

(b) The safety audit is a review of a Mexico-domiciled or new entrant motor carrier's operation and is used to:

* * * * *

**IV. Overall Determination of the Carrier's Basic Safety Management Controls**

(a) If the carrier is evaluated as having inadequate basic safety management controls in at least three separate factors, the carrier will be considered to have inadequate safety management controls in place and corrective action will be necessary in order to avoid having its new entrant registration, provisional operating authority, or provisional Certificate of Registration revoked.

* * * * *

(c) In this example, the carrier scored three or more points for Factors 2, 4 and 5 and FMCSA determined the carrier had inadequate basic safety management controls in at least three separate factors. FMCSA will require corrective action in order to avoid having the carrier's new entrant registration revoked, or having the provisional operating authority or provisional Certificate of Registration suspended and possibly revoked.

* * * * *

Issued on: May 6, 2002.

**Joseph M. Clapp,**

*Administrator.*

[FR Doc. 02–11730 Filed 5–10–02; 8:45 am]

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# Proposed Rules

Federal Register
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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

### 9 CFR Parts 71, 93, 94, 98, and 130

**[Docket No. 01–074–1]**

### Classical Swine Fever Status of Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations by adding the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa to the list of regions considered free of classical swine fever. We have conducted a series of risk evaluations and have determined that these four States have met our requirements for being recognized as free of this disease. This proposed action would allow importation into the United States of pork, pork products, live swine, and swine semen from these regions and would eliminate restrictions that no longer appear necessary.

**DATES:** We will consider all comments we receive that are postmarked, delivered, or e-mailed by July 12, 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. 01–074–1, 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. 01–074–1. 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. 01–074–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Hatim Gubara, Staff Veterinarian, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; phone (301) 734–4356, fax (301) 734–3222.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (the Department) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations pertaining to the importation of animals and animal products are set forth in the Code of Federal Regulations (CFR), title 9, chapter I, subchapter D (9 CFR parts 91 through 99).

Until several years ago, the regulations in parts 91 through 99 (referred to below as the regulations) governed the importation of animals and animal products according to the recognized disease status of the exporting country. In general, if a disease occurred anywhere within a country's borders, the entire country was considered to be affected with the disease, and importations of animals and animal products from anywhere in the country were regulated accordingly. However, international trade agreements entered into by the United States—specifically, the North American Free Trade Agreement and the World Trade Organization Agreement on Sanitary and Phytosanitary Measures—require APHIS to recognize regions, rather than only countries, for the purpose of regulating the importation of animals and animal products into the United States.

Consequently, on October 28, 1997, we published in the **Federal Register** a final rule (62 FR 56000–56026, Docket No. 94–106–9, effective November 28, 1997) and a policy statement (62 FR 56027–56033, Docket No. 94–106–8) that established procedures for recognizing regions (referred to below as ''regionalization'') for the purpose of regulating the importation of animals and animal products. With the establishment of those procedures, APHIS may consider requests to allow the importation of a particular type of animal or animal product from a foreign region, as well as requests to recognize all or part of a country or countries as a region. The regulations define the term *region,* in part, as ''any defined geographic land area identifiable by geological, political, or surveyed boundaries.''

In accordance with these regionalization procedures, we are proposing to amend the regulations in §§ 94.9 and 94.10 by adding the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa to the list of regions considered free of classical swine fever (CSF). The proposed rule would allow importation into the United States of pork, pork products, live swine, and swine semen from these regions and would eliminate restrictions that no longer appear necessary.

*Change in Terminology*

Our regulations in 9 CFR chapter I use the term ''hog cholera.'' However, it is standard practice among veterinary practitioners in the international community to refer to hog cholera as ''classical swine fever.'' Therefore, in the remainder of this proposed rule, including the regulatory text at the end of this document, we use the term ''classical swine fever,'' or the abbreviation CSF, rather than ''hog cholera.'' Additionally, for the sake of consistency throughout our regulations in 9 CFR chapter I, we are proposing to remove the term ''hog cholera'' wherever it appears in the regulations (*i.e.,* parts 71, 93, 94, 98, and 130) and add in its place the term ''classical swine fever.''

*Risk Evaluation*

Using the information submitted to us by the Government of Mexico and the Governments of the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa, as well as information gathered during site visits by APHIS staff to Chihuahua in 1995 and 1997 and to Sinaloa in 1997, we have reviewed and analyzed the animal health status of these four States relative to CSF. This review and analysis was conducted in light of the factors identified in § 92.2, ''Application for recognition of the animal health status of a region,'' which are used to evaluate the risk associated with importing animals or animal products into the United States from a given region. Based on the information submitted to us, we have concluded the following:

*Veterinary Infrastructure*

A decree published in Mexico's Federal Official Daily on March 25, 1980, established a national campaign for the control and eradication of CSF. The campaign is mandatory and permanent throughout the entire country. Animal disease control and eradication programs operate under the authority of the Federal Secretariat for Agriculture, Livestock, Rural Development, Fisheries and Food Safety (SAGARPA), and its subordinate Directorate for Animal Health (DGSA). International sea and airport border control for animal and plant products is under the authority of SAGARPA and its subordinate Directorate for Phyto and Zoosanitary Inspection (DGIF).

Baja California

Baja California is divided into two rural development districts with supportive technical staff coordinated by the SAGARPA delegation. A collaborative relationship exists among the pork producers' association, the SAGARPA delegation and other Federal personnel, and the State animal health official from the central offices. For international control of the movement of livestock and animal byproducts, there are five animal health inspection offices with official veterinary inspectors. At the airports and ports there are sanitary control points. Hog slaughtering and processing are done in Federal Inspection Standard (TIF) establishments that comply with international sanitary requirements and have official veterinary sanitary officers and supervision and certification by the countries to which they export.

Baja California Sur

The State is subdivided into four rural development districts. Six animal health inspection offices control the international movement of livestock and animal byproducts. Sanitary control offices exist at all airports and ports. Hog slaughtering and processing are done in municipal facilities, which have official veterinary sanitary officers providing supervision and inspection.

Chihuahua

Chihuahua is divided into two rural development districts with technical staff coordinated by the SAGARPA delegation. An APHIS site visit conducted in February 1997 determined that the cooperative relationships that exist among the pork producers' association, the SAGARPA delegation and other Federal personnel, and the State animal health official from the central offices are excellent and that the veterinary infrastructure is efficient and reliable. For international control of the movement of livestock and animal byproducts, Chihuahua has 3 animal health offices with official veterinary inspectors and 10 checkpoints for controlling overland movement. Hog slaughtering and processing are done in TIF establishments that comply with international sanitary requirements and have official veterinary sanitary officers and supervision and certification by the countries to which they export.

Sinaloa

Sinaloa is divided into six rural development districts with technical staff coordinated by the SAGARPA delegation. An APHIS site visit conducted in February 1997 determined that the cooperative relationships that exist among the pork producers' association, the SAGARPA delegation and other Federal personnel, and the State animal health official from the central offices are excellent and that the veterinary infrastructure is efficient and reliable. Hog slaughtering and processing are done in TIF establishments that comply with international sanitary requirements and have official veterinary sanitary officers and supervision and certification by the countries to which they export.

*Disease History and Surveillance*

In regions, States, or areas under eradication or free of CSF in Mexico, the Federal and State governments, as well as swine owners or producers and accredited veterinarians, have responsibility for maintaining epidemiological surveillance for CSF. Surveillance includes inspection of swine products and byproducts and of the official documentation required for the control of movement from eradication areas into free areas, as well as virological monitoring by government and producers. Mexico is currently seeking to eradicate pseudorabies. Blood samples collected for the pseudorabies campaign are also tested for CSF, thus providing additional surveillance of that disease.

Baja California

CSF has not been diagnosed in Baja California since at least 1990, despite intensive and ongoing surveillance. The State maintains an active surveillance system, which includes reporting all suspected cases and sampling from commercial and backyard farms. To confirm the absence of CSF in Baja California, ongoing epidemiological surveys are carried out. Since 1997, at least 2,072 samples have been tested annually, with all samples negative for CSF.

Baja California Sur

Mexico recognized Baja California Sur as free of CSF in October 1991, based on an epidemiological survey in which 524 sera and 280 tissue samples were collected from swine slaughtered in municipal abattoirs. Four subsequent outbreaks occurred in the State (one in 1993, two in 1994, and one in 1995), but there have been no reported outbreaks since 1995. Intensive surveillance was initiated after each outbreak to identify the focus and extent of the outbreak, and to confirm that depopulation of infected and exposed animals had eradicated the outbreak. Sera are collected during annual surveillance to confirm the absence of the CSF virus.

Chihuahua

Chihuahua has not reported a case of CSF in over 10 years. The last reported outbreak was in 1989, and eradication efforts began the following year. Mexico declared Chihuahua free of CSF in September 1993. An epidemiological survey conducted a year later confirmed the absence of the virus. Chihuahua maintains an active surveillance system. This includes reporting of all suspected cases and sampling from commercial and backyard farms.

Sinaloa

The last outbreak of CSF in Sinaloa occurred in 1990, with vaccination prohibited the same year. Eradication efforts began in 1991, and Mexico declared Sinaloa free of CSF in 1993. Sinaloan animal health officials monitor all commercial herds on an annual basis.

*Diagnostic Capabilities*

Laboratories for CSF diagnosis include the National Center for Animal

Health Diagnosis (CENASA), the Exotic Animal Disease Commission (EADC) laboratory, and eight laboratories accredited for the diagnosis of CSF located throughout the country. All positive samples are sent to the central laboratories in Mexico City for confirmation, and tissues from any suspect animal are sent to the EADC laboratory in Mexico City for virus isolation. Both CENASA and EADC use the same tests and testing schemes.

*Vaccination Status*

Vaccination has been prohibited in Baja California and Baja California Sur since 1986, in Chihuahua since 1989, and in Sinaloa since 1990.

*Disease Status of Adjacent Regions*

Baja California

Baja California is adjacent to the U.S. States of Arizona and California and the Mexican State of Sonora. CSF is not known to occur in any of these three States.

Baja California Sur

CSF is not known to exist in the Mexican State of Baja California, the only bordering State.

Chihuahua

Located in northern Mexico, Chihuahua borders the U.S. States of New Mexico and Texas to the north and northeast and the Mexican States of Coahuila on the east, Durango on the south, Sinaloa on the southwest, and Sonora on the west. All of these States have been declared free of CSF by the United States or Mexico.

Sinaloa

Sinaloa is adjacent to the Mexican States of Sonora, Chihuahua, Durango, and Nayarit. All of these States have been declared free of CSF by the government of Mexico.

*Degree of Separation From Adjacent Regions*

Baja California

Baja California has two natural barriers: The Gulf of California to the east and the Pacific Ocean to the west. The Colorado River forms the border between Sonora and Baja California.

Baja California Sur

Baja California Sur has two natural barriers: The Gulf of California to the east and the Pacific Ocean to the south and west. Baja California lies to the north.

Chihuahua

The eastern part of Chihuahua is desert, which provides a natural barrier between Chihuahua and Coahuila. The Sierra Madre Occidental Mountains in the west separate Chihuahua from Sonora and Sinaloa. Between Chihuahua and Durango lies a region of mountains and valleys, another geographical feature that complements the extensive permanent internal quarantine system designed to control movement of animals between States.

Sinaloa

Sinaloa is bordered on the east by the Sierra Madre Occidental Mountains, which separate the State from neighboring Durango to the southeast. The mountains also provide a limited number of access points. Sinaloa is bordered on the west by the Pacific Ocean and the Sea of Cortes. Nayarit is to the south, and Sonora and Chihuahua are to the north.

*Movement Across Borders*

Regulations controlling the movement of all land, air, and maritime traffic are the primary means for preventing the reintroduction of CSF into Baja California, Baja California Sur, Chihuahua, and Sinaloa. The entry of live hogs from CSF control zones in Mexico into free zones is not allowed. Hog products and byproducts moving from eradication or control zones to free zones must be processed and inspected by TIF establishments that are expressly authorized by the General Division of Animal Health to market their products and byproducts into CSF-free and eradication zones. Pork products from regions of lower health status may be imported only if they meet time- and temperature-related processing requirements and only if they originate from approved TIF plants. Transportation must be in vehicles sealed with metal straps. At airports, passenger baggage is examined, and because most domestic flights originate from areas not yet declared free of CSF, food served on airplanes is not permitted to contain pork.

*Livestock Demographics and Marketing Practices*

Baja California

In 2001, Baja California had 10 commercial farms with a total population of 15,251 pigs and an additional 6,951 head dispersed among 548 backyard operations. The presence of more pigs in commercial farms than backyard farms is rare in Mexico. The decreasing number of pigs in backyard operations further reduces the risk of a CSF outbreak in Baja California. Baja California has three TIF plants, two of which handle swine. One of the TIF plants has been authorized to export meat to the United States since 1996 and has exported pork to Japan since 1995 without incident. Baja California is not self-sufficient in pork production, and the pork processed at this facility originates from Sonora, the United States, and Canada.

Baja California Sur

Baja California Sur is a net importer of swine and has no TIF facility. The State has two farms that use semi-commercial production methods. According to an inventory taken in 2000, these 2 farms had a total population of 1,200 pigs. The remaining 20,550 head in the State were from backyard operations, in which pigs are raised, slaughtered and consumed on location.

Chihuahua

The swine inventory conducted in 2000 listed 2,626 head distributed among 5 commercial herds. In addition, there were 169,183 head of swine distributed among 45,714 backyard operations. Swine represented 5.8 percent of the total gross value of livestock production in Chihuahua in 2000. Chihuahua is a net exporter of pork. The Carnes Selecta Baeza Favez plant in Chihuahua is allowed to ship fresh and frozen pork to markets in Japan and other countries.

Sinaloa

The 1999 State swine census listed 284,614 hogs on over 33,500 premises. These figures included the 92,070 hogs on the State's 25 commercial farms. Nine of the State's 18 municipalities have commercial production, with the swine industry concentrated in the northern and central areas of the State. Sinaloa is a net exporter of pork. It is estimated that swine account for 10 percent of the total gross value of livestock production in the State and 3.5 percent of Mexico's swine production.

*Detection and Eradication of Disease*

CSF has been effectively controlled and eradicated from Baja California, Baja California Sur, Chihuahua, and Sinaloa and is not known to exist in those four States at this time. The government of Mexico and the State governments maintain a surveillance system capable of rapidly detecting CSF should the disease be reintroduced in any of the four States. The Federal government of Mexico and the State governments of Baja California, Baja California Sur, Chihuahua, and Sinaloa have the laws, policies and infrastructure to detect, respond to, and eliminate any reoccurrence of CSF.

These findings are described in further detail in a qualitative evaluation that may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** and may be viewed on the Internet at *http://www.aphis.usda.gov/vs/reg-request.html* by following the link for current requests and supporting documentation. The evaluation documents the factors that have led us to conclude that Baja California, Baja California Sur, Chihuahua, and Sinaloa are free of CSF. Therefore, we are proposing to recognize the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa as free of CSF and to add them to the lists in §§ 94.9 and 94.10 of regions where CSF is not known to exist.

We are also proposing to amend § 94.15, which, among other things, sets out requirements for transit through the United States of pork and pork products that are not otherwise eligible for entry into the United States under part 94. Because these requirements would no longer apply to pork and pork products from Baja California, Baja California Sur, Chihuahua, and Sinaloa, references to these States in § 94.15(b) and § 94.15(b)(2) would be removed.

**Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would amend the regulations in §§ 94.9 and 94.10 by adding the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa to the list of regions considered free of CSF. The proposed changes would relieve the CSF-related restrictions imposed on the importation of pork, pork products, live swine, and swine semen from these regions.

Based on the assumption that these four States will not drastically increase their levels of hog and pig meat production over that of the last few years, the amount of pork, pork products, live swine, and swine semen that may potentially be imported into the United States from Baja California, Baja California Sur, Chihuahua, and Sinaloa is likely to be negligible. In 2000, the State of Sinaloa produced 1.1 percent of Mexico's live swine and 1.1 percent of its pig meat (FAS, USDA, GAIN Report, 2001), and Chihuahua produced 0.7 percent of Mexico's live swine and 0.5 percent of Mexico's pig meat (tables 1 and 2). The States of Baja California and Baja California Sur, which are not self-sufficient in pork production, produced smaller percentages. In 2001, these four States together produced less than 2 percent of Mexico's total number of live hogs (table 1) and slaughtered pigs (table 2). Between 1999 and 2001, Mexico exported around 3.3 percent of its annual production of pig meat (table 3), which amounted to 35,000 metric tons on average. Mexico has not exported any live swine since 1997 (table 4).

TABLE 1.—LIVE HOGS IN MEXICAN STATES, 2001

| State | Hogs in commercial farms | Hogs in backyard operations | Total |
|---|---|---|---|
| Baja California | 15,251 (in 10 farms) | 6,951 (in 548 farms) | 22,202 (0.09%) |
| Baja California Sur | 1,200 (in 2 farms) | 20,550 (in unknown number of farms) | 21,750 (0.09%) |
| Chihuahua | 2,626 (in 5 farms) | 169,183 (in 45,714 farms) | 171,809 (0.67%) |
| Sinaloa | 92,070 (in 25 farms) | 192,544 (in 33,475 farms) | 284,614 (1.11%) |
| Mexico | 25,736,000 (pig crop + beginning stocks) in both commercial and backyard operations. | | |

**Source:** Risk Assessments of Importing Pork into the United States From the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa; Risk Analysis Systems, PPD, APHIS, USDA.

TABLE 2.—NUMBER OF HOGS SLAUGHTERED IN MEXICAN SLAUGHTERHOUSES

[Percentage of Mexico's total in parenthesis]

| State | 1999 | 2000* |
|---|---|---|
| Baja California | 16,399 (0.15%) | 7,660 (0.13%) |
| Baja California Sur | 9,044 (0.08%) | 4,612 (0.08%) |
| Chihuahua | 60,634 (0.55%) | 31,117 (0.54%) |
| Sinaloa | 132,298 (1.19%) | 63,639 (1.11%) |
| Mexico | 11,110,978 | 5,729,229 |

**Source:** Confederacion Nacional Ganadera with data from SAGARPA. Sum of Federally Inspected Type (TIF) and Municipal Slaughterhouses.
* As of June 30, 2000.

TABLE 3.—MEXICAN SWINE, MEAT

[Metric tons]

| Calendar year | 1999 | 2000 | 2001 |
|---|---|---|---|
| Production | 994,000 | 1,035,000 | 1,060,000 |
| Imports | 143,000 | 130,000 | 150,000 |
| Total supply | 1,137,000 | 1,165,000 | 1,210,000 |
| Exports | 33,000 | 35,000 | 40,000 |
| Domestic consumption | 1,104,000 | 1,130,000 | 1,170,000 |
| Total demand | 1,137,000 | 1,165,000 | 1,210,000 |

**Source:** USDA, FAS, GAIN Report #MX1010, Mexico, Livestock & Products, Semiannual Report 2001; Source for Stocks is the FAOSTAT Database.

TABLE 4.—MEXICAN EXPORTS OF SWINE, LIVE PURE-BREEDING—010310

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|---|---|---|---|---|---|---|
| Quantity | 8 | 29 | 22 | 0 | 0 | 0 |
| Value | $5,000 | $439,000 | $170,000 | ..... | ..... | ..... |

**Source:** FAS Global Agricultural Trade System using data from the UN Statistical Office.
**Data:** Harmonized Tariff Schedule (HS 6 Digit).

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact of their rules on small entities. The domestic entities most likely to be affected by our proposal to declare the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa free of CSF are pork producers.

According to the 1997 Agricultural Census, there were about 102,106 hog and pig farms in the United States in that year, of which 93 percent received $750,000 or less in annual revenues. Agricultural operations with $750,000 or less in annual receipts are considered small entities, according to the Small Business Administration (SBA) size criteria.

We do not anticipate that any U.S. entities (*i.e.,* importers of hogs and hog meat products, and hog producers), small or otherwise, would experience any negative economic effects as a result of this proposed action. This is because the amount of pork, pork products, live swine, and swine semen likely to be imported into the United States from Chihuahua and Sinaloa would be negligible. We expect that the amount of these articles likely to be imported from Baja California and Baja California Sur would either be less than that from the other two States or none at all.

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

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

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

**List of Subjects**

*9 CFR Part 71*

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

*9 CFR Part 93*

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

*9 CFR Part 94*

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

*9 CFR Part 98*

Animal diseases, Imports.

*9 CFR Part 130*

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we propose to amend 9 CFR parts 71, 93, 94, 98, and 130 as follows:

## PART 71—GENERAL PROVISIONS

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

**Authority:** 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.4.

**§ 71.3 [Amended]**

2. In § 71.3, paragraph (b) would be amended by removing the words ''hog cholera'' and adding the words ''classical swine fever'' in their place.

## PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

3. The authority citation for part 93 would continue to read as follows:

**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.

**§ 93.505 [Amended]**

4. In § 93.505, paragraph (a) would be amended by removing the words ''hog cholera'' and adding the words ''classical swine fever'' in their place.

**§ 93.517 [Amended]**

5. In § 93.517, paragraph (a) would be amended by removing the words ''hog cholera'' and adding the words ''classical swine fever'' in their place.

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

6. The authority citation for part 94 would continue 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.

7. The heading of part 94 would be revised to read as set forth above.

8. Section 94.9 would be amended as follows:

a. By revising the section heading and paragraph (a) to read as set forth below.

b. By removing the words ''hog cholera'' and adding in their place the words ''classical swine fever'' in following places:

i. Paragraph (b), introductory text.

ii. Paragraph (b)(1)(iii)(C).

iii. Paragraph (b)(1)(iii)(C)(*1*), both times they appear.

iv. Paragraph (b)(1)(iii)(C)(*2*), both times they appear.

v. Paragraph (c).

**§ 94.9 Pork and pork products from regions where classical swine fever exists.**

(a) Classical swine fever is known to exist in all regions of the world except Australia; Canada; Denmark; England, except for East Anglia (Essex, Norfolk, and Suffolk counties); Fiji; Finland; Iceland; Isle of Man; the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa; New Zealand; Northern Ireland; Norway; the Republic of Ireland; Sweden; Trust Territory of the Pacific Islands; and Wales.

* * * * *

9. Section 94.10 would be amended by revising the section heading and paragraph (a) to read as follows:

**§ 94.10 Swine from regions where classical swine fever exists.**

(a) Classical swine fever is known to exist in all regions of the world except Australia; Canada; Denmark; England, except for East Anglia (Essex, Norfolk, and Suffolk counties); Fiji; Finland; Iceland; Isle of Man; the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa; New Zealand; Northern Ireland; Norway; the Republic of Ireland; Sweden; Trust Territory of the Pacific Islands; and Wales. No swine that are moved from or transit any region where classical swine fever is known to exist may be imported into the United States, except for wild swine imported into the United States in accordance with paragraph (b) of this section.

* * * * *

**§ 94.15 [Amended]**

10. Section 94.15 would be amended by removing the words ''Baja California, Baja California Sur,'', ''Chihuahua,'', and ''Sinaloa,'' in the following places:

a. The introductory text of paragraph (b).

b. Paragraph (b)(2).

**§ 94.17 [Amended]**

11. Section 94.17 would be amended by removing the words ''hog cholera'' and adding in their place the words ''classical swine fever'' in the following places:

a. The section heading.

b. Paragraph (b).

c. Paragraph (c).

**§ 94.20 [Amended]**

12. In § 94.20, paragraph (c) and the introductory text of paragraph (e) would be amended by removing the words ''hog cholera'' and adding in their place the words ''classical swine fever''.

## PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

13. The authority citation for part 98 would continue to read as follows:

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 103–105, 111, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

**§ 98.15 [Amended]**

14. Section 98.15 would be amended by removing the words ''hog cholera'' and adding in their place the words ''classical swine fever'' in the following places:

a. Paragraph (a)(1)(ii).

b. Paragraph (a)(2)(ii).

c. Paragraph (a)(5)(ii)(B).

d. Paragraph (a)(7)(i)(B).

e. Paragraph (a)(8)(i)(B).

**§ 98.34 [Amended]**

15. Section 98.34 would be amended as follows:

a. By removing the words ''hog cholera'' and adding in their place the words ''classical swine fever'' in the following places:

i. Paragraph (c)(7)(ii).

ii. Paragraph (c)(7)(iii)(G).

b. In paragraph (c)(7)(iii)(D), by removing the words ''Hog cholera'' and adding in their place the words ''Classical swine fever''.

## PART 130—USER FEES

16. The authority citation for part 130 would continue to read as follows:

**Authority:** 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

**§ 130.14 [Amended]**

17. In § 130.14, paragraph (b), the table would be amended in the column titled ''Test'' by removing the words ''(hog cholera)'' in the entry for Fluorescent antibody neutralization and adding in their place the words ''(classical swine fever)''.

18. In § 130.18, paragraph (b), the table would be amended by removing the entry for Hog cholera tissue sets and adding a new entry in alphabetical order to read as follows:

**§ 130.18 User fees for veterinary diagnostic reagents produced at NVSL or other authorized site (excluding FADDL).**

* * * * *

(b) * * *

| Reagent | User fee | Unit |
|---|---|---|
| * * * | * | * |
| Classical swine fever tissue sets. | 81.50 | Tissue set. |
| * * * | * | * |

Done in Washington, DC, this 7th day of May, 2002.

**Peter Fernandez,**

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

[FR Doc. 02–11897 Filed 5–10–02; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–SW–50–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Kaman Aerospace Corporation Model K–1200 Helicopters

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

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

**SUMMARY:** This document proposes revising an existing airworthiness directive (AD) for Kaman Aerospace Corporation (Kaman) Model K–1200 helicopters. That AD currently requires reducing the life limit of the rotor shaft and teeter pin assembly and establishing a life limit for the flap clevis. This action would retain those requirements but would remove a flap clevis part number from the applicability. This proposal is prompted by the determination after an analysis of testing results that a certain flap clevis should have an unlimited life. The actions specified by the proposed AD are intended to remove the life limit for a specified flap clevis and to revise the maintenance manual by removing the life limit for that flap clevis. Also, the actions specified by the proposed AD are intended to prevent fatigue failure of the rotor shaft, the teeter pin assembly, and the flap clevis and subsequent loss of control of the helicopter.

**DATES:** Comments must be received by July 12, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–50–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard Noll, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7160, fax (781) 238–7170.

**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 in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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 mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–SW–50–AD.'' The postcard will be date stamped and returned to the commenter.

**Discussion**

On June 12, 2001, the FAA issued AD 2001–13–03, Amendment 39–12283 (66 FR 34102, June 27, 2001), to require reducing the life limit of the rotor shaft and the teeter pin assembly and establishing a life limit for the flap clevis. That action was prompted by the discovery of cracks in parts returned to the manufacturer. That condition, if not corrected, could result in failure of a part and subsequent loss of control of the helicopter.

Since the issuance of that AD, further testing indicates that a specified time-in-service (TIS) life limit is unwarranted for flap clevis, part number (P/N) K911049–021.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the FAA proposes revising AD 2001–13–03 to retain the existing life limits for each rotor shaft, teeter pin assembly, and flap clevis, except flap clevis, P/N K911049–021. Accordingly, this NPRM would also propose to revise the Limitations section of the maintenance manual to remove the life limit of 640 hours TIS for flap clevis, part number K911049–021.

The FAA estimates that 9 helicopters of U.S. registry would be affected by this proposed AD. No additional costs would be incurred to accomplish the proposed actions because it would relieve an AD requirement.

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39–12283 (66 FR 34102, June 27, 2001), and by adding a new airworthiness directive (AD), to read as follows:

**Kaman Aerospace Corporation:** Docket No. 2000–SW–50–AD. Revises AD 2001–13–03, Amendment 39–12283, Docket No. 2000–SW–50–AD.

*Applicability:* Model K–1200 helicopters, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters 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 accomplished previously.

To prevent failure of the rotor shaft, teeter pin assembly, or flap clevis due to fatigue cracks, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, remove any rotor shaft, part number (P/N) K974112–001, –003, –005, –007, –009, or –101, that has 3,750 or more hours time-in-service (TIS) and replace it with an airworthy part. Remove any teeter pin assembly, P/N K910005–007 or –009, that has 550 or more hours TIS and replace it with an airworthy part. Remove any flap clevis, P/N K911049–011, –017, or –019, that has 640 or more hours TIS, and replace it with an airworthy part.

(b) This AD revises the Limitations section of the maintenance manual by removing the life limit of 640 hours TIS established for the flap clevis, P/N K911049–021. The life limit for each rotor shaft, P/N K974112–001, –003, –005, –007, –009, and –101 remains at 3,750 hours TIS; the life limit for each teeter pin assembly, P/N K910005–007 and –009, remains at 550 hours TIS; and the life limit for the flap clevis, P/N K911049–011, –107, and –109 remains at 640 hours TIS.

(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 Manager, Boston Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(d) Special flight permits will not be issued.

Issued in Fort Worth, Texas, on April 29, 2002.

**David A. Downey,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 02–11807 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 02–AAL–4]**

## Proposed Revision of Class E Airspace; Kodiak, AK

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to revise Class E airspace at Kodiak, AK. The FAA is establishing four new standard instrument approach procedures (SIAP) at the Kodiak Airport, Kodiak, Alaska. The current SIAPs will be cancelled coincident with the effective date and time of the new SIAPs. An airspace review has determined that the existing Class E airspace at Kodiak is insufficient to contain aircraft executing the new SIAPs. Adoption of this proposal would result in the addition of Class E airspace at Kodiak, AK.

**DATES:** Comments must be received on or before June 27, 2002.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 02–AAL–4, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's Home Page at *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

**FOR FURTHER INFORMATION CONTACT:** Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: Derril.CTR.Bergt@faa.gov. Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

**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. 02–AAL–4.'' 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 Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, 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 Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register**'s web page for access to recently published rulemaking documents at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

Any person may obtain a copy of this NPRM by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

### The Proposal

The FAA proposes to amend 14 CFR part 71 by revising Class E airspace at Kodiak, AK. The intended effect of this proposal is to extend that Class E controlled airspace above 1,200 feet to enable IFR operations at Kodiak, AK to be contained within controlled airspace.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed four new SIAPs for the Kodiak Airport. The new approaches are (1) Instrument Landing System Y (ILS Y) Runway 25, original; (2) Very High Frequency Omni-navigational Range or Tactical Air Navigation Y (VOR or TACAN Y) Runway 25, original; (3) Non-directional Beacon (NDB) Runway 25, original; and (4) Area Navigation (Global Positioning System) (RNAV GPS) Runway 25, original. The existing SIAPs: (1) ILS/Distance Measuring Equipment (DME)–1, Runway 25; (2) VOR or TACAN–1, Runway 25; (3) NDB–1, Runway 25; and (4) GPS, Runway 25 will be cancelled by this action.

An airspace review was conducted to determine if Class E airspace at Kodiak was sufficient to contain aircraft while executing the new SIAPs. A determination was made that a slight addition of new airspace was needed, north of Colored Federal Airway B27 (Blue 27) and VOR Federal Airway V506 (Victor 506), northwest of the Kodiak VOR and NDB. That airspace extending upward from 1,200 feet above the surface will be expanded if this action is taken.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 in FAA Order 7400.9J, *Airspace Designations and Reporting Points,* 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 established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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 rule, when promulgated, will not have a significant economic impact on a

substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

1. The authority citation for 14 CFR 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 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 extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AAL AK E5 Kodiak, AK [REVISED]**

Kodiak Airport, AK
(Lat. 57°45′00″ N, long. 152°29′38″ W)
Kodiak VORTAC
(Lat. 57°46′00″ N, long. 152°20′23″ W)

That airspace extending upward from 700 feet above the surface within a 6.8 mile radius of the Kodiak Airport, and within 5 miles south and 9 miles north of the 070° radial of the Kodiak VORTAC extending to 17 miles northeast of the VORTAC and within 8 miles north and 4 miles south of the Kodiak Localizer front course extending from the airport to 20.3 miles east of the airport and within 14 miles of the Kodiak VORTAC extending from the 358° radial clockwise to the 107° radial; and that airspace extending upward from 1,200 feet above the surface within lat. 57°57′06″ N, long. 152°45′00″ W to lat. 57°55′00″ N, long. 152°28′00″ W to lat. 57°53′00″ N, long. 152°27′06″ W to point of beginning and within 27 miles of the Kodiak VORTAC extending clockwise from the 023 radial to the 088 radial and within 8 miles north and 5 miles south of the Kodiak Localizer front course extending from the airport to 32 miles east of the airport.

* * * * *

Issued in Anchorage, AK, on May 2, 2002.

**Trent S. Cummings,**

*Manager, Air Traffic Division, Alaskan Region.*

[FR Doc. 02–11775 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–154920–01]**

**RIN 1545–BA33**

## Guidance Regarding the Definition of Foreign Personal Holding Company Income

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

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations that provide that gain or loss arising from certain commodities hedging transactions and currency gain or loss arising from certain interest-bearing liabilities do not constitute (or are not netted against) foreign personal holding company income. This treatment is proposed because the applicable commodities hedging transactions and interest-bearing liabilities typically offset transactions that do not generate foreign personal holding company income. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by August 21, 2002. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for September 11, 2002, at 10 a.m. must be submitted by August 21, 2002.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG–154920–01), 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–154920–01, Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at: *www.irs.gov/regs.* 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, Kenneth Christman or Ted Setzer at (202) 622–3870; concerning submission and delivery of comments and the public hearing, Treena Garrett, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 954(c)(1)(C) of the Internal Revenue Code provides that *foreign personal holding company income* of a controlled foreign corporation (a CFC) generally includes the excess of gains over losses from transactions in commodities. An exception to this treatment is provided, however, for gains and losses that arise out of ''*bona fide* hedging transactions'' entered into by a producer, processor, merchant or handler of commodities. Section 954(c)(1)(C)(i). On September 7, 1995, final regulations were published in the **Federal Register** (60 FR 46500, as corrected at 60 FR 62024) under section 954 governing the definition of a CFC and the definitions of *foreign base company income* and *foreign personal holding company income* of a CFC. These regulations address, among other matters, the circumstances in which income from transactions in commodities will be treated as foreign personal holding company income. In particular, the regulations provide that income from a ''qualified hedging transaction'' is excluded from the definition of foreign personal holding company income. § 1.954–2(f)(1)(ii). A qualified hedging transaction is defined in the regulations generally as a bona fide hedging transaction with respect to a sale of commodities in the active conduct of a commodities business by a CFC if substantially all of the CFC's business is as an active producer, processor, merchant or handler of commodities. §§ 1.954–2(f)(2)(iii) and (iv).

Following the publication of the final regulations, some taxpayers have commented that the regulations inappropriately characterize as foreign personal holding company income any gain arising from hedging transactions entered into by a manufacturer to protect itself from fluctuations in the prices of commodities associated with the products that it manufactures. Because the manufacturer would not be considered to be selling the commodities in the active conduct of a commodities business, transactions entered into by the manufacturer could not qualify for the ''qualified hedging transaction'' exception under the regulations.

The regulations also address the treatment of currency gain or loss for purposes of subpart F. Although the regulations provide that foreign personal holding company income generally includes the excess of foreign currency gains over foreign currency losses, an exception is provided for foreign currency gain or loss ''directly related to the business needs of the controlled foreign corporation.'' § 1.954–2(g)(2)(ii). Notwithstanding this ''business needs'' exception, the regulations provide that currency gain or loss arising from an interest-bearing liability must be allocated and apportioned between subpart F and non-subpart F income in the same manner that interest expense associated with the liability is allocated and apportioned between subpart F and non-subpart F income under §§ 1.861–9T and 1.861–12T. § 1.954–2(g)(2)(iii).

Some taxpayers have commented that the final regulations inappropriately characterize a portion of foreign currency gain on certain interest-bearing liabilities as foreign personal holding company income. In particular, these taxpayers have noted that securities dealers commonly utilize a technique known as ''match funding'' to manage currency exposures associated with their dealer assets. Rather than borrowing in their functional currency to meet their business needs, dealers who utilize this technique attempt to manage their exposure to foreign currencies on their dealer assets by borrowing the funds needed for their business in the currency in which the dealer assets are denominated. As a result, the foreign currency exposure on the dealer assets is offset economically by the foreign currency exposure on the interest-bearing liabilities incurred by the dealer. Under the regulations, foreign currency gain on the dealer assets would qualify for the ''business needs'' exception and therefore would not be classified as foreign personal holding company income. If the foreign currency gain arose on the offsetting interest-bearing liabilities, however, a portion of the foreign currency gain likely would be treated as subpart F income under the regulations.

**Explanation of Provisions**

The proposed regulations address each of these issues by refining the relevant exceptions to foreign personal holding company income.

*Commodities Hedging Transactions*

Section 1.954–2(f)(2)(v), as proposed, would provide that a hedging transaction entered into by a CFC with respect to its business as a producer, processor, merchant or handler of commodities may be a qualified hedging transaction although the hedging transaction is not a hedge with respect to a sale of commodities in the active conduct of a commodities business by a CFC substantially all of whose business is as an active producer, processor, merchant or handler of commodities. The proposed regulation also provides that, for purposes of satisfying the qualified hedging transaction requirements, a producer, processor, merchant or handler of commodities includes (but is not limited to) a CFC that regularly uses commodities in a manufacturing, construction, utilities, or transportation business. Similar to the regulations currently in effect, the proposed regulations provide that a corporation is not a producer, processor, merchant or handler of commodities (and therefore cannot satisfy the qualified hedging transaction requirements) if its business is primarily financial.

*Foreign Currency Gain or Loss on Interest-Bearing Liabilities*

Section 1.954–2(g)(2)(ii)(C)(*2*), as proposed, would provide that interest-bearing liabilities of a CFC will be treated as dealer property if the liabilities are denominated in a currency so as to manage the CFC's currency risk with respect to dealer property held by the CFC. This provision would apply only to interest-bearing liabilities identified on the date the liability is incurred. The result of the proposed rule would be to exclude currency gain or loss on interest-bearing liabilities that manage the CFC's currency risk with respect to dealer property from the computation of foreign personal holding company income.

*Proposed Effective Dates*

Section 1.954–2(f)(2)(v) is proposed to apply to gain or loss realized by a CFC with respect to a qualified hedging transaction entered into on or after the date proposed § 1.954–2(f)(2)(v) is published as a final regulation in the **Federal Register**. Section 1.954–2(g)(2)(ii)(C)(*2*) is proposed to apply to gain or loss from an interest-bearing liability entered into by a CFC on or after the date proposed § 1.954–2(g)(2)(ii)(C)(*2*) is published as a final regulation in the **Federal Register**.

*Special Analysis*

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also 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 these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

*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) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 11, 2002, at 10 a.m. in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, 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 30 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 the hearing. Persons who wish to present oral comments at the hearing must submit electronic or 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 August 21, 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 authors of these regulations are Kenneth Christman and Ted Setzer of the Office of the Associate

Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** In § 1.954–0, paragraph (b) is amended by:

1. Removing the entry for § 1.954–2(f)(2)(iii)(E).
2. Revising the entry for § 1.954–2(f)(2)(iv).
3. Adding entries for § 1.954–2(f)(2)(iv)(C), (f)(2)(v) and (f)(2)(vi).
4. Revising the entry for § 1.954–2(g)(2)(ii)(C).

The additions and revisions read as follows::

**§ 1.954–0 Introduction.**

* * * * *

(b) * * *

**§ 1.954–2 Foreign personal holding company income.**

* * * * *

(f) * * *

(2) * * *

(iv) Qualified hedging transaction entered into prior to the date § 1.954–2(f)(2)(v) is published as a final regulation in the **Federal Register**.

* * * * *

(C) Effective date.

(v) Qualified hedging transaction entered into on or after the date § 1.954–2(f)(2)(v) is published as a final regulation in the **Federal Register**.

(A) In general.

(B) Exception.

(C) Examples.

(D) Effective date.

(vi) Financial institutions not a producer, etc.

(g) * * *

(2) * * *

(ii) * * *

(C) Regular dealers.

(1) General rule.

(2) Certain interest-bearing liabilities treated as dealer property.

(*i*) In general.

(*ii*) Failure to identify certain liabilities.

(*iii*) Effective date.

* * * * *

**Par. 3.** Section 1.954–2 is amended by:

1. Removing paragraph (f)(2)(iii)(E).
2. Revising the heading of paragraph (f)(2)(iv).
3. Adding paragraphs (f)(2)(iv)(C), (f)(2)(v), and (f)(2)(vi).
4. Revising paragraph (g)(2)(ii)(C) and (g)(2)(iii).

The revisions and additions read as follows:

**§ 1.954–2 Foreign personal holding company income.**

* * * * *

(f) * * *

(2) * * *

(iv) Qualified hedging transaction entered into prior to the date § 1.954–2(f)(2)(v) is published as a final regulations in the **Federal Register**.

* * * * *

(C) *Effective date.* This paragraph (f)(2)(iv) applies to gain or loss realized by a controlled foreign corporation with respect to a qualified hedging transaction entered into prior to the date § 1.954–2(f)(2)(v) is published as a final regulation in the **Federal Register**.

(v) *Qualified hedging transaction entered into on or after the date § 1.954–2(f)(2)(v) is published as a final regulation in the* **Federal Register**—(A) *In general.* The term *qualified hedging transaction* means a bona fide hedging transaction, as defined in paragraph (a)(4)(ii) of this section, with respect to one or more commodities transactions reasonably necessary to the conduct of any business by a producer, processor, merchant or handler of commodities in a manner in which such business is customarily and usually conducted by others. For purposes of this paragraph (f)(2)(v), a producer, processor, merchant or handler of commodities includes a controlled foreign corporation that regularly uses commodities in a manufacturing, construction, utilities, or transportation business.

(B) *Exception.* The term *qualified hedging transaction* does not include a transaction described in section 988(c)(1) (without regard to section 988(c)(1)(D)(i)).

(C) *Examples.* The following examples illustrate the provisions of this paragraph (f)(2)(v):

*Example 1.* CFC1 is a controlled foreign corporation located in country A. CFC1 manufactures and sells machinery in country B using aluminum and component parts purchased from third parties that contain significant amounts of aluminum. CFC1 conducts its manufacturing business in a manner in which such business is customarily and usually conducted by others. To protect itself against increases in the price of aluminum used in the machinery it manufactures, CFC1 enters into futures purchase contracts for the delivery of aluminum. These futures purchase contracts are bona fide hedging transactions. As CFC1 purchases aluminum and component parts containing significant amounts of aluminum in the spot market for use in its business, it closes out an equivalent amount of aluminum futures purchase contracts by entering into offsetting aluminum futures sales contracts. The aluminum futures purchase contracts are qualified hedging transactions as defined in paragraph (f)(2)(v)(A) of this section. Accordingly, any gain or loss on such aluminum futures purchase contracts is excluded from the computation of foreign personal holding company income.

*Example 2.* CFC2 is a controlled foreign corporation located in country B. CFC2 operates an airline business within country B in a manner in which such business is customarily and usually conducted by others. To protect itself against increases in the price of aviation fuel, CFC2 enters into forward contracts for the purchase of aviation fuel. These forward purchase contracts are bona fide hedging transactions. As CFC2 purchases aviation fuel in the spot market for use in its business, it closes out an equivalent amount of its forward purchase contracts for cash pursuant to a contractual provision that permits CFC2 to terminate the contract and make or receive a one-time payment representing the contract's fair market value. The aviation fuel forward purchase contracts are qualified hedging transactions as defined in paragraph (f)(2)(v)(A) of this section. Accordingly, any gain or loss on such aviation fuel forward purchase contracts is excluded from the computation of foreign personal holding company income.

(D) *Effective date.* This paragraph (f)(2)(v) applies to gain or loss realized by a controlled foreign corporation with respect to a qualified hedging transaction entered into on or after the date § 1.954–2(f)(2)(v) is published as a final regulation in the **Federal Register**.

(vi) *Financial institutions not a producer, etc.* For purposes of this paragraph (f), a corporation is not a producer, processor, merchant or handler of commodities if its business is primarily financial. For example, the business of a controlled foreign corporation is primarily financial if its principal business is making a market in notional principal contracts based on a commodities index.

* * * * *

(g) * * *

(2) * * *

(ii) * * *

(C) *Regular dealers*—(1) *General rule.* Transactions in dealer property (as defined in paragraph (a)(4)(v) of this section) described in section 988(c)(1)(B) or (C) that are entered into by a controlled foreign corporation that is a regular dealer (as defined in paragraph (a)(4)(iv) of this section) in

such property in its capacity as a dealer will be treated as directly related to the business needs of the controlled foreign corporation under paragraph (g)(2)(ii)(A) of this section.

(*2*) *Certain interest-bearing liabilities treated as dealer property*—(*i*) *In general.* For purposes of this paragraph (g)(2)(ii)(C), an interest-bearing liability incurred by a controlled foreign corporation that is denominated in (or determined by reference to) a non-functional currency shall be treated as dealer property if the liability, by being denominated in such currency, reduces the controlled foreign corporation's currency risk with respect to dealer property, and the liability is identified on the controlled foreign corporation's records as a liability treated as dealer property before the close of the day on which the liability is incurred.

(*ii*) *Failure to identify certain liabilities.* If a controlled foreign corporation identifies certain interest-bearing liabilities as liabilities treated as dealer property under the previous paragraph but fails to so identify other interest-bearing liabilities that manage its currency risk with respect to assets held that constitute dealer property, the Commissioner may treat such other liabilities as dealer property if the Commissioner determines that the failure to identify such other liabilities had as one of its principal purposes the avoidance of federal income tax.

(*iii*) *Effective date.* This paragraph (g)(2)(ii)(C)(*2*) applies only to gain or loss from an interest-bearing liability entered into by a controlled foreign corporation on or after the date § 1.954–2(g)(2)(ii)(C)(2) is published as a final regulation in the **Federal Register**.

* * * * *

(iii) *Special rule for foreign currency gain or loss from an interest-bearing liability.* Except as provided in paragraph (g)(2)(ii)(C)(*2*) or (g)(5)(iv) of this section, foreign currency gain or loss arising from an interest-bearing liability is characterized as subpart F income and non-subpart F income in the same manner that interest expense associated with the liability would be allocated and apportioned between subpart F income and non-subpart F income under ''1.861–9T and 1.861–12T.

* * * * *

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 02–11891 Filed 5–10–02; 8:45 am]

**BILLING CODE 4830–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[MN63–01–7288b; FRL–7165–8]**

### Approval and Promulgation of Implementation Plans; Minnesota

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to approve a revision to the Minnesota State Implementation Plan (SIP) that updates Minnesota's performance test rule in the SIP. This plan was submitted by the Minnesota Pollution Control Agency on December 16, 1998, and sets out the procedures for facilities that are required to conduct performance tests to demonstrate compliance with their emission limits and/or operating requirements. The request is approvable because it satisfies the requirements of the Clean Air Act. Specifically, we are proposing to approve into the SIP Minnesota Rules 7017.2001 through 2060, and to amend in the SIP Minnesota Rules 7011.0010, 7011.0105, 7011.0510, 7011.0515, 7011.0610, 7011.0710, 7011.0805, 7011.1305, 7011.1405, and 7011.1410 as adopted by the state on July 13, 1998. In addition, we are proposing to remove from the SIP Minnesota Rule 7017.2000, since this rule was repealed by the state in 1993. In the final rules section of this **Federal Register**, we are approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Written comments must be received on or before June 12, 2002.

**ADDRESSES:** Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

**FOR FURTHER INFORMATION CONTACT:** Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

Dated: January 17, 2002.

**David A. Ullrich,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 02–11735 Filed 5–10–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA 249–0349; FRL–7211–2]**

### Revisions to the California State Implementation Plan, South Coast Air Quality Management District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a conditional approval of revisions to the South Coast Air Quality Management District's portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen ($NO_X$) and oxides of sulfur ($SO_X$) emissions from facilities emitting 4 tons or more per year of $NO_X$ and/or $SO_X$ in the year 1990 or any subsequent year. We are proposing action on local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). These rules compose the South Coast Air Quality Management District's Regional Clean Air Incentives Market (''RECLAIM'') program. We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by July 12, 2002.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

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

South Coast Air Quality Management District (''SCAQMD''), 21865 E. Copley Dr., Diamond Bar, CA 91765–4182.

**FOR FURTHER INFORMATION CONTACT:** Thomas C. Canaday, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4121.

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

**Table of Contents**



## I. The State's Submittal

### *A. What Rules Did the State Submit?*

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by SCAQMD and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

| Local agency | Rule # | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| SCAQMD | 2000 | General | 05/11/01 | 05/31/01 |
| SCAQMD | 2001 | Applicability | 05/11/01 | 05/31/01 |
| SCAQMD | 2002 | Allocations for Oxides of Nitrogen ($NO_X$) and Oxides of Sulfur ($SO_X$). | 05/11/01 | 05/31/01 |
| SCAQMD | 2004 | Requirements | 05/11/01 | 05/31/01 |
| SCAQMD | 2005 | New Source Review for RECLAIM | 04/20/01 | 10/30/01 |
| SCAQMD | 2006 | Permits | 05/11/01 | 05/31/01 |
| SCAQMD | 2007 | Trading Requirements | 05/11/01 | 05/31/01 |
| SCAQMD | 2010 | Administrative Remedies and Sanctions | 05/11/01 | 05/31/01 |
| SCAQMD | 2011 | Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur ($SO_X$) Emissions. | 05/11/01 | 05/31/01 |
| SCAQMD | 2011–2 | Protocol for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur ($SO_X$) Emissions. | 03/16/01 | 05/31/01 |
| SCAQMD | 2012 | Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen ($NO_X$) Emissions. | 05/11/01 | 05/31/01 |
| SCAQMD | 2012–2 | Protocol for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen ($NO_X$) Emissions. | 03/16/01 | 05/31/01 |
| SCAQMD | 2015 | Backstop Provisions | 05/11/01 | 05/31/01 |
| SCAQMD | 2020 | RECLAIM Reserve | 05/11/01 | 05/31/01 |

On, July 20, 2001, these rule submittals (excepting the submittal for Rule 2005) were found to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review. The rule submittal for Rule 2005 was found to be complete on January 1, 2002.

### *B. Are There Other Versions of These Rules?*

We approved an amended version of Rule 2000 into the SIP on June 15, 1998. The SCAQMD adopted revisions to the SIP-approved version of Rule 2000 on February 14, 1997, and April 11, 1997, and CARB submitted them to us on August 22, 1997. The SCAQMD subsequently adopted additional revisions to the SIP-approved version of this rule on October 20, 2000, and CARB submitted those revisions to us on March 14, 2001.

We approved an amended version of Rule 2001 into the SIP on June 15, 1998. The SCAQMD adopted revisions to the SIP-approved version of Rule 2001 on February 14, 1997, and CARB submitted them to us on August 22, 1997.

We approved an amended version of Rule 2002 into the SIP on March 14, 2000.

We approved an amended version of Rule 2004 into the SIP on June 15, 1998. The SCAQMD adopted revisions to the SIP-approved version of Rule 2004 on July 12, 1996, and CARB submitted them to us on March 3, 1997.

We approved an amended version of Rule 2005 into the SIP on March 14, 2000.

We approved amended versions of Rules 2006 and 2007 into the SIP on June 15, 1998.

We approved Rule 2010, adopted by the SCAQMD on October 15, 1993, into the SIP on November 8, 1996.

We approved versions of Rules 2011 and 2011–2 into the SIP on June 15, 1998. These versions were adopted by the SCAQMD on December 7, 1995. The SCAQMD adopted revisions to the SIP-approved versions of Rule 2011 and 2011–2 on July 12, 1996, and CARB submitted them to us on March 3, 1997. The SCAQMD adopted additional revisions to the SIP-approved versions of these rules on February 14, 1997, and CARB submitted those revisions to us on August 22, 1997. Finally, the SCAQMD adopted further revisions to the SIP-approved versions of Rules 2011 and 2011–2 on April 11, 1997, and April 9, 1999, and CARB submitted those revisions to us on July 23, 1999.

We approved versions of Rules 2012 and 2012–2 into the SIP on June 15, 1998. These versions were adopted by the SCAQMD on December 7, 1995. The SCAQMD adopted revisions to the SIP-approved versions of Rule 2012 and 2012–2 on July 12, 1996, and CARB submitted them to us on March 3, 1997. The SCAQMD adopted additional revisions to the SIP-approved versions of these rules on February 14, 1997, and April 11, 1997, and CARB submitted those revisions to us on August 22, 1997. Finally, the SCAQMD adopted further revisions to the SIP-approved versions of Rules 2012 and 2012–2 on April 9, 1999, and CARB submitted those revisions to us on July 23, 1999.

We approved an amended version of Rule 2015 into the SIP on June 15, 1998. This version had been adopted by the SCAQMD on December 7, 1995. The SCAQMD adopted revisions to the SIP-approved version of Rule 2015 on July 12, 1996, and CARB submitted them to us on March 3, 1997. The SCAQMD subsequently adopted additional revisions to the SIP-approved version of this rule on February 14, 1997, and

CARB submitted those revisions to us on August 22, 1997.

There is no previous version of Rule 2020 in the SIP. While we can act on only the most recently submitted versions of submitted rules, we have reviewed materials provided with previous submittals.

*C. What Is the Purpose of the Submitted Rules?*

The RECLAIM program is intended to allow facilities subject to the program to meet their emission reduction requirements in the most cost-effective manner. The program was designed to provide incentives for industry to reduce emissions and develop innovative pollution control technologies, as well as give facilities added flexibility in meeting emission reduction requirements. Each facility under the program was given an allocation of RECLAIM Trading Credits (''RTCs'') based on a declining balance equivalent to the emissions levels that would have occurred if the facility continued to operate under the then current command-and-control regulations. Facilities within the RECLAIM program must reconcile their emissions with their RTC holdings and have the option of doing so by either installing control equipment, modifying their activity, or purchasing RTCs from other facilities.

Beginning June 2000, RECLAIM program participants experienced a sharp and sudden increase in $NO_X$ RTC prices for both 1999 and 2000 compliance years. The program rules were amended with the intent of lowering and stabilizing RTC prices. The submitted rule revisions isolate existing large power plants (those producing 50 megawatts or more) from the rest of RECLAIM, require these plants to install emissions control equipment, limit their ability to purchase RTCs from other program participants, and impose on them a mitigation fee for emissions in excess of RTC holdings. The revisions also initiate a temporary, limited, pilot RECLAIM Air Quality Investment Program; improve registration and timely reporting of RTC trades; and modify procedures for late electronic emissions reports. The rule revisions also effect additional changes to the RECLAIM program predating and unrelated to the sudden increase in RTC prices. Some definitions in Rule 2000 were added or modified. Rule 2001 was revised to specify that RECLAIM facilities will be exempt from future amendments to certain rules listed in Rule 2001. The breakdown provisions of Rule 2004 were revised. Numerous revisions were made to the monitoring, reporting, and recordkeeping requirements and protocols of Rule 2011, Rule 2011–2, Rule 2012, and Rule 2012–2. Rule 2015 was revised to consolidate some reporting requirements and to specify the presentation date of the annual RECLAIM audit report. The TSD has more information about these rules.

**II. EPA's Evaluation and Action**

*A. How Is EPA Evaluating the Rules?*

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (''RACT'') for major sources in nonattainment areas (*see* section 182(a)(2)(A)), and must not relax existing requirements (*see* sections 110(l) and 193). The SCAQMD regulates an ozone nonattainment area (*see* 40 CFR part 81), so the submitted rules must fulfill RACT.

We have used guidance and policy documents to help evaluate enforceability and RACT requirements consistently. Because this guidance is non-binding and does not represent final agency action, EPA uses this guidance as an initial screen to determine whether approvability issues arise. These documents include the following:

1. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the $NO_X$ Supplement), 57 FR 55620, November 25, 1992.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24,1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. ''Improving Air Quality with Economic Incentive Programs,'' January 2001, Office of Air and Radiation, EPA–452/R–01–001 (''EIP Guidance''). This guidance applies to discretionary economic incentive programs (''EIPs'') and represents the agency's interpretation of what EIPs should contain in order to meet the requirements of the CAA.

4. ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup and Shutdown,'' EPA Office of Air and Radiation, and EPA Office of Enforcement and Compliance Assurance, September 20, 1999 (''Excess Emissions Policy'').

*B. Do the Rules Meet the Evaluation Criteria?*

These rules improve the SIP by requiring the installation of pollution control equipment and by strengthening reporting provisions. These rules are largely consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

*C. What Are the Rule Deficiencies?*

The rules conflict with section 110 and part D of the Act and prevent full approval of the SIP revision due to their treatment of excess emissions which occur due to equipment breakdown. Rules 2000 and 2004 contain provisions which exempt, under certain circumstances, excess emissions that occur during breakdowns from being counted when a RECLAIM facility reconciles its emissions with its RTC holdings. In our EIP Guidance and our Excess Emissions Policy, EPA interprets the CAA as requiring that such emissions not be exempted.

*D. Proposed Action and Public Comment*

On April 2, 2002, SCAQMD Executive Officer Barry R. Wallerstein submitted a commitment on behalf of the SCAQMD staff to adopt and submit revisions to the RECLAIM program rules within one year after the date of publication of EPA's final action on today's proposed conditional approval. These revisions will establish a mechanism within the RECLAIM program to mitigate all excess emissions resulting from breakdowns. RECLAIM will be revised to require monitoring and tracking of excess emissions from breakdowns and comparison of the total amount of exempted emissions to the amount of unused RTCs for that year. If total exempted breakdown emissions from all RECLAIM sources exceeds the total amount of unused RTCs program-wide in any year, RECLAIM allocations in the following year will be reduced by an amount equal to that exceedence.

As authorized in section 110(k)(4) of the Act, EPA is proposing a conditional approval of the submitted rule to improve the SIP. If finalized, this action would incorporate into the SIP both the submitted rule and the commitment to correct the identified deficiency within one year.

This conditional approval shall be treated as a disapproval if the SCAQMD fails to adopt rule revisions to correct the deficiencies within the time

allowed. If this rule is disapproved, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rules have been adopted by the SCAQMD, and EPA's final conditional approval would not prevent the local agency from enforcing it.

We will accept comments from the public on the proposed conditional approval for the next 60 days.

**III. Background Information**

*A. Why Were These Rules Submitted?*

$NO_X$ helps produce ground-level ozone, smog and particulate matter which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control $NO_X$ emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency $NO_X$ rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

| Date | Event |
|---|---|
| March 3, 1978 | EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305. |
| May 26, 1988 | EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act. |
| November 15, 1990 | Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. |
| May 15, 1991 | Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date. |

**IV. Administrative Requirements**

*A. Executive Order 12866*

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

*B. Executive Order 13211*

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

*C. Executive Order 13045*

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

*D. Executive Order 13132*

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

*E. Executive Order 13175*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes,

as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

*F. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*G. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*H. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

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

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: April 26, 2002.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

[FR Doc. 02–11825 Filed 5–10–02; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 208 and 210

**[DFARS Case 2002–D003]**

### Defense Federal Acquisition Regulation Supplement; Competition Requirements for Purchases From a Required Source

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice of public meeting.

**SUMMARY:** The Director of Defense Procurement is sponsoring a public meeting to discuss the interim rule published at 67 FR 20687 on April 26, 2002. The rule amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 811 of the Fiscal Year 2002 National Defense Authorization Act. Section 811 requires DoD to conduct market research before purchasing a product listed in the Federal Prison Industries (FPI) catalog, to determine whether the FPI product is comparable in price, quality, and time of delivery to products available from the private sector. A listing of possible discussion topics can be found on the Defense Procurement Web site at *http://www.acq.osd.mil/dp.*

**DATES:** The meeting will be held on June 3, 2002, from 1 p.m. to 4 p.m., local time.

**ADDRESSES:** The meeting will be held in Room C–43, Crystal Mall 4, 1931 Jefferson Davis Highway, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Susan L. Schneider, Defense Acquisition Regulations Directorate, at (703) 602–0326 or *susan.schneider@osd.mil.*

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

[FR Doc. 02–11899 Filed 5–10–02; 8:45 am]

BILLING CODE 5001–08–U

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### 49 CFR Part 175

**[Docket No. RSPA–02–11654 (HM–228)]**

**RIN 2137–AD18**

### Hazardous Materials: Revision of Requirements for Carriage by Aircraft; Extension of Comment Period

**AGENCY:** Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

**ACTION:** Advance notice of proposed rulemaking (ANPRM); extension of comment period.

**SUMMARY:** On February 26, 2002, RSPA published an advance notice of proposed rulemaking to consider changes to the requirements in the Hazardous Materials Regulations (HMR) on the transportation of hazardous materials by aircraft. These changes would modify or clarify requirements to promote safer transportation practices; promote compliance and enforcement; eliminate unnecessary regulatory requirements; convert certain exemptions into regulations of general applicability; finalize outstanding petitions for rulemaking; facilitate

international commerce; and make these requirements easier to understand. In response to requests by members of the regulated community, the comment period for the advanced proposed rule is extended until September 30, 2002.

**DATES:** Submit comments by September 30, 2002. To the extent possible, we will consider comments received after this date.

**ADDRESSES:** *Comments:* You must address comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street SW., Washington, DC 20590–0001. You should identify the docket number (RSPA–02–11654 (HM–228)) and submit your comments in two copies. If you want to confirm our receipt of your comments, you should include a self-addressed, stamped postcard. You may also e-mail comments by accessing the Dockets Management System web site at *http://dms.dot.gov/* and following the instructions for submitting a document electronically. If you prefer, you may fax comments to 202–366–2251 for filing in the docket.

The Dockets Management System is located on the Plaza Level of the Department of Transportation headquarters building (Nassif Building) at the above address. You may review public dockets there between the hours of 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You may also review comments on-line at the DOT Dockets Management System Web site at: *http://dms.dot.gov*.

We are experiencing some delays in mail deliveries as a result of ongoing efforts to ensure that mail is not contaminated with infectious or harmful materials. We encourage you to take advantage of the opportunities provided by the DOT Dockets Management System to submit comments electronically or by fax.

**FOR FURTHER INFORMATION CONTACT:** Deborah Boothe or Michael Stevens of the Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On February 26, 2002, the Research and Special Programs Administration (RSPA) published an advance notice of proposed rulemaking (ANPRM) (67 FR 8769) under Docket RSPA–02–11654 (HM–228) to consider changes to the HMR on transportation of hazardous materials by aircraft. The HMR (49 CFR parts 171–180) govern the transportation of hazardous materials in commerce by all modes of transportation, including aircraft (49 CFR 171.1(a)(1)). Parts 172 and 173 of the HMR include requirements for classification and packaging of hazardous materials, hazard communication, and training of employees who perform functions subject to the requirements in the HMR. Part 175 contains additional requirements applicable to aircraft operators transporting hazardous materials aboard an aircraft, and authorizes passengers and crew members to carry hazardous materials on board an aircraft under certain conditions.

RSPA and the Federal Aviation Administration (FAA) are reviewing part 175 and other sections of the HMR applicable to transportation of hazardous materials by aircraft. This review will increase safety in the air transportation of hazardous materials by:

(1) Modifying or clarifying requirements to promote compliance and enforcement;
(2) Eliminating unnecessary current regulatory requirements;
(3) Adopting current exemptions and outstanding petitions for rulemaking;
(4) Facilitating international commerce; and
(5) Making the regulations easier to understand.

On March 28, 2002, the Air Transport Association (ATA) requested an extension of the comment period (closing date of May 31, 2002) until September 30, 2002. ATA requested the extension because they need additional time to develop comments. ATA stated that the airline industry needs the opportunity to have air carrier working groups meet on several occasions to examine this docket in depth and to answer the 60 questions posed by RSPA and FAA in the rulemaking.

On April 2, 2002, the Air Line Pilots Association (ALPA), requested an extension of the comment period until September 30, 2002, to fully address the rule and prepare comments. ALPA concluded that the areas and topic requests, as well as the large number of specific questions in the rule are far reaching in their scope and require an in-depth response. ALPA commented that the complexity and number of questions posed in the rule makes it necessary to request additional time to develop their comments. RSPA agrees that extending the comment period on this in-depth rulemaking is in the public interest because it will assure a more thorough consideration of the issues by all affected entities. Therefore, we are extending the comment period to September 30, 2002.

Issued in Washington, DC on May 7, 2002, under the authority delegated in 49 CFR part 106.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 02–11902 Filed 5–10–02; 8:45 am]

**BILLING CODE 4910–60–P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

## Notice of Availability of a Draft Recovery Plan for Five Plants From Monterey County, CA, for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability for public review of a Draft Recovery Plan for Five Plants from Monterey County, California. This recovery plan includes the following species: coastal dunes milk-vetch (*Astragalus tener* var. *titi*), Yadon's piperia (*Piperia yadonii*), Hickman's potentilla (*Potentilla hickmanii*), Monterey clover (*Trifolium trichocalyx*), and Gowen cypress (*Cupressus goveniana* ssp. *goveniana*). These plant species are found primarily along the coast of northern Monterey County, California. Hickman's potentilla also occurs in San Mateo County and has occurred historically in Sonoma County. Coastal dunes milk-vetch has occurred historically in Los Angeles and San Diego Counties, California. The Service solicits review and comment from local, State, and Federal agencies, and the public on this draft recovery plan.

**DATES:** Comments on the draft recovery plan must be received on or before July 12, 2002 to receive consideration by the Service.

**ADDRESSES:** Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003 (phone: 805–644–1766). Requests for copies of the draft recovery plan, and written comments and materials regarding this plan should be addressed to Ms. Diane K. Noda, Field Supervisor, at the above Ventura address.

**FOR FURTHER INFORMATION CONTACT:** Heidi E.D. Crowell, Fish and Wildlife Biologist, at the above address.

**SUPPLEMENTARY INFORMATION:**

## Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended in 1988 (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

Coastal dunes milk-vetch, Yadon's piperia, Hickman's potentilla and Monterey clover are listed as endangered. Gowen cypress is listed as a threatened species.

Coastal dunes milk-vetch is restricted to sandy soils that occur within 30 meters (m) (98 feet (ft)) of the ocean beach on relatively flat coastal terraces that are exposed to ocean sprays and periodic saturation. Only one extant population is currently known to occur, made up of approximately 11 scattered patches of plants that are separated by 17-Mile Drive on the western edge of the Monterey Peninsula. The land is owned by the Pebble Beach Company and the Monterey Peninsula Country Club.

Yadon's piperia is endemic to Monterey County and has a center of distribution within large undeveloped tracts of Monterey pine forest. Its range extends from the Los Lomos area near the border of Santa Cruz County in the north to approximately 25 kilometers (km) (15 miles (mi)) south of the Monterey Peninsula near Palo Colorado Canyon where it occurs in a maritime chaparral habitat. Some of the plants occur on protected property, while a large proportion of plants occur on unprotected private property.

Hickman's potentilla is currently known from one site on the Monterey Peninsula and at one site in San Mateo County. The population in Monterey County grows in fine sandy soils within an opening of Monterey pine forest that supports wet conditions for a variety of native and nonnative grassland species. The population in San Mateo County was presumed extirpated until it was rediscovered on private land in 1995 by biologists conducting surveys for a highway project.

Monterey clover is known from only one area in the vicinity of Huckleberry Hill within the Monterey Peninsula. Only a few scattered individuals were reported in the late 1990's. This species is a classic fire-follower, taking advantage of reduced forest cover that allows a significantly higher proportion of light to reach the herbaceous ground cover for the first few years after a fire. Fire suppression activities and development within the Pebble Beach Company property are likely negatively affecting this species' habitat and seed bank.

Gowen cypress is currently found in only two stands, in addition to individuals that occur locally in cultivation. The largest stand (Del Monte Forest) is near Huckleberry Hill on the west side of the Monterey Peninsula and covers approximately 40 hectares (ha) (100 acres (ac)) within lands owned by the Pebble Beach Company and the Del Monte Forest Foundation. The second stand (Point Lobos) occurs 10 km (6 mi) south of Huckleberry Hill on the north side of Gibson Creek inland of the Point Lobos Peninsula. This stand occurs on a 60-ha (150-ac) parcel owned by the California Department of Parks and Recreation and is somewhere between 16 and 32 ha (40 and 80 ac) in size. The stands occur in mixed conifer forest and maritime chaparral habitats. Within the chaparral habitat, the cypress also grows in a dense, dwarf or pygmy forest.

These plants are threatened by one or more of the following: alteration, destruction, and fragmentation of habitat resulting from urban and golf course development; recreational activities; competition with nonnative plant species; herbivory from native or nonnative species; demographic stochasticity; and disruption of natural fire cycles due to fire suppression associated with increasing residential development around and within occupied habitat.

The objective of this recovery plan is to provide a framework for the recovery of coastal dunes milk-vetch, Yadon's piperia, Hickman's potentilla, Monterey clover, and Gowen cypress so that protection by the Act is no longer necessary. This recovery plan establishes criteria necessary to accomplish delisting of Gowen cypress and downlisting of coastal dunes milk-vetch, Yadon's piperia, Hickman's potentilla, and Monterey clover to threatened status. These criteria include: (1) Permanent protection of habitat presently occupied by the species and the surrounding ecosystem on which they depend, with long-term commitments to conserving the species; (2) in a protected habitat, successful control of invasive, nonnative plants and successful management of other problems (management success must be demonstrated through at least 10 years of biological monitoring); (3) development of management strategies that include results from research on the life histories of the taxa, and results from monitoring the species' response to vegetation management; (4) successful reintroduction or establishment of populations for coastal dunes milk-vetch, Hickman's potentilla, and Monterey clover; (5) implementation of a prescribed burn plan or successful alternative management strategy for Gowen cypress; (6) monitoring to demonstrate long-term viability of existing populations, including successful recruitment and reproduction; and (7) establishment of seed banks at recognized institutions. Criteria for delisting of coastal dunes milk-vetch, Yadon's piperia, Hickman's potentilla, and Monterey clover may be addressed in future revisions of this recovery plan when additional information about the biology of the species is available.

## Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 6, 2002.

**D. Kenneth McDermond,**

*Manager, California/Nevada Operations Office, Region 1, U.S. Fish and Wildlife Service.*

[FR Doc. 02–11802 Filed 5–10–02; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

Federal Register
Vol. 67, No. 92
Monday, May 13, 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.

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

### Notice of Intent to Grant Exclusive License

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

**ACTION:** Notice of intent.

**SUMMARY:** Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Encore Technologies LLC of Minnetonka, Minnesota, an exclusive license to U.S. Patent No. 5,968,808, ''Method for Producing Desiccation Tolerant Paecilomyces Fumosoroseus Spores,'' issued on October 19, 1999. Notice of Availability of this invention for licensing was published in the **Federal Register** on May 11, 1999.

**DATES:** Comments must be received on or before June 12, 2002.

**ADDRESSES:** Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

**FOR FURTHER INFORMATION CONTACT:** June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5257.

**SUPPLEMENTARY INFORMATION:** The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Encore Technologies LLC has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

**Michael D. Ruff,**

*Assistant Administrator.*

[FR Doc. 02–11894 Filed 5–10–02; 8:45 am]

**BILLING CODE 3410–03–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

### Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

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

**ACTION:** Notice of availability and intent.

**SUMMARY:** Notice is hereby given that the Federally owned invention disclosed in U.S. Patent Application Serial No. 09/989,287, ''Use of Paecilomyces Spp. As Pathogenic Agents Against Subterranean Termites,'' filed November 20, 2001, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Encore Technologies LLC of Minnetonka, Minnesota, an exclusive license to this invention.

**DATES:** Comments must be received on or before August 12, 2002.

**ADDRESSES:** Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1174, Beltsville, Maryland 20705–5131.

**FOR FURTHER INFORMATION CONTACT:** June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5257.

**SUPPLEMENTARY INFORMATION:** The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Encore Technologies LLC has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

**Michael D. Ruff,**

*Assistant Administrator.*

[FR Doc. 02–11895 Filed 5–10–02; 8:45 am]

**BILLING CODE 3410–03–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

### Notice of Intent To Grant Exclusive License

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

**ACTION:** Notice of intent.

**SUMMARY:** Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Heritage Fare, Ltd., of Cleveland, Ohio, an exclusive license to U.S. Patent No. 5,676,994, ''Non-Separable Starch-Oil Compositions,'' issued on October 4, 1997 and to U.S. Patent No. 5,882,713, ''Non-Separable Compositions of Starch and Water-Immiscible Organic Materials,'' issued on March 16, 1999, for all uses in the field of whole muscle, ground, prepared and/or processed meats and dry seasonings, sauces, soups and gravy bases intended for use with these meats, including beef, pork and poultry but not including seafood. U.S. Patent No. 5,676,994 is a continuation of U.S. Patent Application Serial No. 08/233,173, ''Non-Separable Starch-Oil Compositions,'' and U.S. Patent No. 5,882,713 is a continuation-in-part of U.S. Patent Application Serial No. 08/233,173. Notice of Availability for U.S. Patent Application Serial No. 08/233,173 was published in the **Federal Register** on October 24, 1994.

**DATES:** Comments must be received on or before June 12, 2002.

**ADDRESSES:** Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

**FOR FURTHER INFORMATION CONTACT:** June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5257.

**SUPPLEMENTARY INFORMATION:** The Federal Government's patent rights in this invention are assigned to the United

States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Heritage Fare, Ltd has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

**Michael D. Ruff,**

*Assistant Administrator.*

[FR Doc. 02–11893 Filed 5–10–02; 8:45 am]

**BILLING CODE 3410–03–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

### Notice of Intent to Grant Exclusive License

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

**ACTION:** Notice of intent.

**SUMMARY:** Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Molecular Staging, Inc. of New Haven, Connecticut, an exclusive license to U.S. Patent No. 6,054,300, ''Single-Site Amplification (SSA): Method for Accelerated Development of Nucleic Acid Markers,'' issued on April 25, 2000. Notice of Availability of this invention for licensing was published in the **Federal Register** on January 8, 1998.

**DATES:** Comments must be received within thirty (30) calendar days of the date of publication of this Notice in the **Federal Register**.

**ADDRESSES:** Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

**FOR FURTHER INFORMATION CONTACT:** June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5257.

**SUPPLEMENTARY INFORMATION:** The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Molecular Staging, Inc. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

**Michael D. Ruff,**

*Assistant Administrator.*

[FR Doc. 02–11892 Filed 5–10–02; 8:45 am]

**BILLING CODE 3410–03–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Garver EIS; Kootenai National Forest, Lincoln County, Montana

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service will prepare an Environmental Impact Statement (EIS) for a proposal to improve forest health and wildlife habitat, reduce urban interface fuels, and make access management changes to improve grizzly bear habitat. The project is located on the Three Rivers Ranger District, Kootenai National Forest, Lincoln County, Montana, approximately 30 air miles northeast of Troy, Montana.

**SCOPING COMMENT DATES:** Comments concerning the scope of the analysis should be received by June 17, 2002.

**ADDRESSES:** Written comments and suggestions concerning the scope of the analysis should be sent to Michael L. Balboni, District Ranger, Three Rivers Ranger District, 1437 Hwy 2, Troy, MT 59935.

**FOR FURTHER INFORMATION CONTACT:** Kathy Mohar, Team Leader, Three Rivers Ranger District, 1436 Hwy 2, Troy, MT 59935. Phone: (406) 295–4693.

**SUPPLEMENTARY INFORMATION:** The project area is approximately 43,096 acres and is located in portions of T36N, R32W; T36N; R31W; T37N; R32W; and T37N, R31W, PMM, Lincoln County, Montana. The project area encompasses the West Fork Yaak River, Pete Creek, Lap Creek, Waper Creek, and Mud Creek, as well as several small drainages that are tributary to the Yaak River. The West Fork Yaak Inventoried Roadless Area is located along the north and western border of this project area.

The purpose and need for this project is to: (1) Improve and Maintain Forest Health; (2) Improve and Maintain Winter Range Conditions; (3) Improve and Maintain Old Growth Characteristics; (4) Reduce Fuels In The Wildlife Urban Interface; (5) Improve Growing Conditions and Long-Term Management Options for Overstocked Sapling Pole Stands; (6) Improve Quality and Quantity of Grizzly Bear Habitat; and (7) Contribute Forest Products to the Economy.

To meet the purpose and need, this project proposes treatments to manage for vegetative conditions that are most suitable to a fire-dependent ecosystem, and in the long term to encourage more resilient and sustainable forest conditions. Intermediate harvest treatments are proposed where forest conditions are generally healthy but some undesirable trends have been noted. Regeneration harvest methods would be implemented in areas with high levels of insect and disease, uniform mature lodgepole pine stands, and/or where restoration of species at risk are identified. This treatment may also be used in site-specific areas where small forage openings would be created for the benefit of big games species. Precommercial thinning is proposed for overstocked sapling/pole stands.

Mechanical treatments and/or burning would be used in other areas to reduce fuels, including urban interface areas, and to improve big game habitat. Burning is proposed for the Dusty Peak area within the West Fork Yaak Inventoried Roadless Area and in designated old growth.

Access management changes are proposed with this project to improve grizzly bear security and habitat conditions. Best Management Practices, including activities such as outsloping, waterbarring, and culvert replacement would be applied to haul roads being used for this project.

**Range of Alternatives**

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative in which none of the proposed activities will be implemented. Additional alternatives will examine varying levels and location for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

**Public Involvement and Scoping**

The public is encouraged to take part in the process and to visit with Forest Service officials at any time during the

analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations that may be interested in, or affected by, the proposed action. This input will be used in preparation of the draft and final EIS. The scoping process will include:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying alternatives to the proposed action.
4. Exploring additional alternatives that will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

**Estimated Dates for Filing:**

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in July 2001. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed in September 2001. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and to applicable laws, regulations, and policies considered in making a decision regarding the proposal.

**Reviewer's Obligations**

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be must helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

**Responsible Official**

The District Ranger of the Three Rivers Ranger District, Michael L. Balboni, is the Responsible Official. As Responsible Official, he will decide if the proposed project will be implemented and will document the decision and reasons for the decision in the Record of Decision.

Dated: May 6, 2002.

**Cami Winslow,**

*Acting Forest Supervisor, Kootenai National Forest.*

[FR Doc. 02–11829 Filed 5–10–02; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Virginia Forest Management Project Environmental Impact Statement

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) for the Virginia Area. The Record of Decision will disclose how the Forest Service has decided to manage approximately 101,000 acres of federal land. The proposed action would provide approximately 35 to 45 million board feet of timber to local and regional timber markets; final harvest approximately 5,000 acres of 60+ year-old aspen and jack pine experiencing substantial mortality from blowdown, decay and old age; reduce fuel loading on approximately 2,500 acres of mature red and white pine communities that are converting to balsam fir and brush through prescribed under-burning and other treatments to remove ladder fuels; hand release approximately 2,000 acres of regenerated red pine, white pine and black spruce communities from competing vegetation, and provide access to non-federally owned lands within the project boundaries. A road analysis will be done in conjunction with the Virginia project, to develop a mutual transportation plan. A range of alternatives responsive to significant issues will be developed, including a no-action alternative. The proposed project is located on the Laurentian Ranger District, Aurora, MN, Superior National Forest. In addition, the Laurentian Ranger District may create temporary openings greater than 40 acres under 36 CFR 219.27 (d)(ii).

**DATES:** Comments concerning the scope of this project should be received by June 20, 2002.

**ADDRESSES:** Please send written comments to: Laurentian Ranger District, Superior National Forest, ATTN: Virginia EIS, 318 Forestry Road, Aurora, MN 55705.

**FOR FURTHER INFORMATION CONTACT:** Allan Bier, District Ranger, or Barbara Stordahl, Team Leader, Laurentian Ranger District, Superior National Forest, 318 Forestry Road, Aurora, MN 55705, or at (218) 229–8800.

**SUPPLEMENTARY INFORMATION:** Public participation will be an integral component of the study process, and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments and assistance from federal, State and local agencies, individuals and organizations that may be interested or affected by the proposed activities. The scoping process will include: (1) Identification of potential issues, (2) identification of issues to be analyzed in depth and (3) elimination of insignificant issues, or those which have been covered by a previous environmental review. Written comments will be solicited through a scoping package that will be sent to the project mailing list and local newspaper. For the Forest Service to best use the scoping input, comments should be received by June 20, 2002. Issues identified for analysis in the EIS include the potential effects of the project and the relationship of the project to age class distribution, species composition, reforestation, fuel reduction treatment, temporary roads, rare resources, and others.

Based on the results of scoping and the resource capabilities within the project area, alternatives, including a no-action alternative, will be developed for the Draft EIS. The Draft EIS is

projected to be filed with the Environmental Protection Agency (EPA) in May 2003. The Final EIS is anticipated in November 2003.

The comment period on the Draft EIS will be a minimum of 45 days from the date that the EPA publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, that it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EIS's must structure their participation in the environmental review of the proposal, so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553, [1978]). Environmental objections that could have been raised at the Draft EIS stage may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 [E.D. Wis. 1980]). Because of these court rulings, it is very important that those interested in this proposed action, participate by the close of the 45-day comment period, so that substantive comments and objections are made available to the Forest Service at a time when they can be meaningfully considered and responded to in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments during scoping, and on the Draft EIS, should be as specific as possible and refer to specific pages or chapters. Comments may address the adequacy of the Draft EIS, or the merits of the alternatives formulated and discussed. In addressing these points, reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act in 40 CFR 1503.3. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action, and will be available for public inspection. Comments submitted anonymously will be accepted and considered. Pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission, from the public record, by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality. If the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within seven days.

**Permits/Authorizations**

The proposed action may create temporary openings greater than 40 acres. A 60-day public notice and review by the Regional Forester would be needed for such action.

Easement or permission to cross non-federal property may be needed to access some treatment units to implement Forest Service activities.

**Responsible Official**

James W. Sanders, Forest Supervisor, Superior National Forest, is the responsible official. In making the decision, the responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies. The responsible official will state the rationale for the chose alternative in the Record of Decision.

**James W. Sanders,**

*Forest Supervisor, Superior National Forest.*

[FR Doc. 02–11828 Filed 5–10–02; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Forest Counties Payments Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Correction.

**SUMMARY:** In notice document 02–11111 beginning on page 30353 in the issue of Monday, May 6, 2002, make the following correction:

On page 30353 in the second column, in the **SUMMARY** section, the date of the Rapid City, South Dakota, meeting of the Forest Counties Payments Committee was previously listed as occurring on April 20, 2002. This should be changed to read May 17, 2002.

Dated: May 7, 2002.

**Maitland Sharpe,**

*Acting Deputy Chief, Programs and Legislation.*

[FR Doc. 02–11809 Filed 5–10–02; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Tehama County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Tehama County Resource Advisory Committee (RAC) will hold its fourth meeting.

**DATES:** The meeting will be held on May 9, 2002, and will begin at 9 a.m. and end at approximately 12 p.m.

**ADDRESSES:** The meeting will be held at the Lincoln Street School, Conference Room E, 1135 Lincoln Street, Red Bluff, CA.

**FOR FURTHER INFORMATION CONTACT:** Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** Agenda items to be covered include: (1) Reports from subcommittee's and possible approval (2) approval of revision of short form, (3) project presentations with possible preliminary selection (4) public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: April 11, 2002.

**James F. Giachino,**

*Designated Federal Official.*

[FR Doc. 02–11920 Filed 5–9–02; 8:45 am]

**BILLING CODE 3410–11–M**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting with briefing of the Florida Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Thursday, May 30, 2002, at the Adam's Mark Hotels & Resorts, 225 Coast Line Drive East, Jacksonville, Florida 32202. The purpose of the planning meeting with briefing is to: (1) Plan future activities, and (2) be briefed on immigration and Title VI allegations of discrimination in Jacksonville.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby

D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 6, 2002.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 02–11868 Filed 5–10–02; 8:45 am]

**BILLING CODE 6335–01–P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will be held from 9 a.m. to 5 p.m. on Thursday, May 30, 2002, at the Hyatt Regency Hotel, One South Capitol Avenue, Indianapolis, Indiana 46204. The purpose of the meeting is to discuss current events and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 6, 2002.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 02–11867 Filed 5–10–02; 8:45 am]

**BILLING CODE 6335–01–P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 6 p.m. and adjourn at 8 p.m. on June 6, 2002, at the Baton Rouge Marriott, 5500 Hilton Avenue, Baton Rouge, LA 70808. The Committee will plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 3, 2002.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 02–11865 Filed 5–10–02; 8:45 am]

**BILLING CODE 6335–01–P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Nebraska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will convene at 6 p.m. and adjourn at 8 p.m. on June 5, 2002, at the Holiday Inn, 3221 S. 72nd Street, Omaha, Nebraska 68124. The Committee will plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 3, 2002.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 02–11866 Filed 5–10–02; 8:45 am]

**BILLING CODE 6335–01–P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Wednesday, June 5, 2002, at the North Carolina A&T State University, Hodgin Hall, Room 118, Greensboro, North Carolina 27411. The purpose of the meeting is to hold new member orientation and discuss the Title VI project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 6, 2002.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 02–11864 Filed 5–10–02; 8:45 am]

**BILLING CODE 6335–01–P**

## DEPARTMENT OF COMMERCE

### Under Secretary for Industry and Security

**[01–BXA–01]**

### In the Matter of: Jabal Damavand General Grading Company, P.O. Box 52130, Dubai, United Arab Emirates, Respondent; Decision and Order

On January 4, 2001, the Bureau of Industry and Security (BIS) [1] issued a charging letter against the respondent, Jabal Damavand General Trading Company (Jabal), that alleged three violations of the Export Administration Regulations (EAR), 15 CFR part 730 *et seq*. The three charges related to a shipment of U.S.-origin ferrography laboratory equipment to the United Arab Emirates (UAE) and, ultimately, to

[1] The Bureau of Industry and Security was formerly known as the Bureau of Export Administration. The name of the Bureau was changed pursuant to an order signed by the Secretary of Commerce on April 16, 2002.

Iran. The specific charges were: (1) Reexporting the equipment from the UAE to Iran without the required authorization from BIS; (2) participating in that transaction with knowledge that a violation had occurred; and (3) making a false statement to the U.S. supplier of the equipment as to the end-use and destination of the equipment. *See* BIS Charging Letter of January 4, 2001.

Jabal failed to answer the charging letter within the time limits set forth in Section 766.7 of the EAR. Accordingly, on June 14, 2001, the Administrative Law Judge (ALJ), at the request of BIS, issued a Recommended Decision and Order finding that Jabal had violated the EAR as charged in the charging letter and recommending a penalty of denial of Jabal's export privileges for 10 years. *See* Recommended Decision and Order of June 14, 2001, published at 66 FR 39,008 (July 26, 2001).

On July 19, 2001, I vacated the ALJ's Recommended Decision and Order and remanded the case to the ALJ. *See* 66 FR 39,007, July 26, 2001. Based on my review of the record, I found that BIS had not established the Export Control Classification Number of the equipment in question and, consequently, had not established a requirement under the EAR to obtain authorization from BIS to reexport the equipment from the UAE to Iran. I also directed the ALJ to determine whether to consider as an answer a letter that Jabal had sent to the ALJ more than 30 days after notice of issuance of the charging letter. Finally, I directed the ALJ to reconsider the recommended penalty in light of any decisions on remand.

On September 4, 2001, the ALJ approved BIS's request to amend the charging letter. *See* ALJ Order of September 4, 2001, at 2. BIS filed an amended charging letter with the ALJ on September 24, 2001 and served it on Jabal on the same date. *See* BIS Amended Charging Letter of September 24, 2001. Jabal did not respond to the amended charging letter.

BIS's amended charging letter alleges four violations of the EAR. These violations are: (1) Causing the illegal exportation of goods from the United States through the UAE to Iran; (2) transferring the goods in the UAE to Iran knowing that they had been exported in violation of the EAR; (3) evading the EAR by misrepresenting to the U.S. supplier that the end-user was in the UAE when, infact, the end-user was in Iran; and (4) evading the EAR by having the equipment assembled and tested in the UAE so as to conceal the true destination from the U.S. supplier.

In his Recommended Decision and Order issued on April 1, 2002, the ALJ found that the charges in the amended charging letter were proven on three alternate theories: (1) Jabal defaulted by not answering the amended charging letter within the time set forth in the EAR; (2) BIS was entitled to a summary decision as a matter of law because there was no genuine issue of material fact; and (3) after review of the facts in the record, the charges in the amended charging letter were proven by BIS. *See* Recommended Decision and Order of April 1, 2002, at 10–11.

As provided by section 66.22 of the EAR, the Recommended Decision and Order has been referred to me for final action. Based on my review of the entire record, I find that each of three alternate findings of the ALJ is correct and that the charges in the amended charging letter have been proven. I hereby affirm the findings of fact and conclusions of law in the Recommended Decision and order of the ALJ.

*It is therefore ordered.*

*First,* that, for a period of 10 years from the date that this Order is published in the **Federal Register**, Jabal Damavand General Trading Company, P.O. Box 52130, Dubai, United Arab Emirates, and all of its successors or assigns, officers, representatives, agents, and employees (hereinafter collectively referred to as the ''denied person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the Untied States that is subject to the Export Administration Regulations (EAR), or in any other activity subject to the EAR, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in connection with any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR.

*Second,* that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession, or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the EAR that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and that is owned, possessed, or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed, or controlled by the denied person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, ''servicing'' means installation, maintenance, repair, modification, or testing.

*Third,* that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related servicing may also be made subject to the provisions of this Order.

*Fourth,* that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

*Fifth,* that this Order shall be served on the denied person and on BIS, and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision and Order, except for the section headed ''Proposed Decision and Order,'' shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: May 2, 2002.

**Kenneth I. Juster,**

*Under Secretary of Commerce for Industry and Security.*

**Bureau of Export Administration**

*Recommended Decision and Order*

Background

On January 4, 2001, the Bureau of Export Administration (''BXA'') issued a charging letter against the respondent, JABAL DAMAVAND GENERAL TRADING COMPANY (''Jabal'') that alleged three violations of Export Administration Regulations (''EAR'').[1] The charges related to a shipment of ferrography laboratory equipment to Iran through the United Arab Emirates (''UAE''). The charges were (1) re-exporting the equipment from the UAE to Iran without re-export authorization from BXA, (2) participating in that transaction with knowledge that a violation had occurred, and (3) making a false statement to the supplier of the equipment as to the end use and destination of the equipment.

Jabal failed to answer the charging letter in a timely manner. On June 14, 2001, this Administrative Law Judge (ALJ), at the request of BXA, issued a Recommended Decision and Order that found Jabal in violation of the charges in the charging letter and that recommended a penalty of denial of Jabal's export privileges for 10 years.

On July 19, 2001, the Under Secretary for Export Administration vacated the Recommended Decision and Order and remanded the case to the ALJ. The Under Secretary found that BXA had not established the Export Control Commodity Number (ECCN) of the goods in question and, consequently, had not established a requirement under the Export Administration Regulations to obtain authorization from BXA for the re-export. The Under Secretary further directed the ALJ to determine whether to consider as an answer a letter that Jabal had sent to the ALJ more than 30 days after service of the charging letter. Finally, the Under Secretary directed that the ALJ reconsider the penalty.

On August 14, 2001, BXA asked the ALJ's permission to amend the charging letter. (Under EAR Section 766.3(a), the charging letter may be amended with permission of the ALJ.) On September 4, 2001, the ALJ approved BSA's request to amend the charging letter. Additionally, the ALJ ordered BXA to ''include [in the amended charging letter] sufficient information relating to the classification of the ferrography laboratory equipment within the Commerce Control List.

This ALJ also ordered:

> Respondent may * * * amend its answer after service of the amended charging letter. Respondent shall have 20 days from the date of service of the amended charging letter to file such an amendment. A failure to timely file such an answer will be considered a waiver of the right to answer the amended charging letter.

BXA filed an amended charging letter with the ALJ on September 24, 2001 and served it on Jabal on the same date. Jabal has not responded to the amended charging letter.[2]

BXA's amended charging letter alleges four violations of the Export Administration Regulations. These violations are (1) causing the illegal exportation of goods from the United States through the UAE to Iran, (2) transferring the goods in the UAE to Iran knowing that they had been exported in violation of the Regulations, (3) evading the Regulations by representing to the U.S. supplier that the end-user was in the UAE when, in fact, the end-user was in Iran, and (4) evading the Regulations by assembling and testing that goods in the UAE so the U.S. supplier would not know their true destination.

On March 11, 2002, BXA filed a Motion for Recommended Decision together with a Declaration of David J. Poole, Senior Special Agent, of the Bureau of Export Administration, Office of Export Enforcement. The Declaration included various factual exhibits.[3] Jabal has not responded to this motion.

Facts

In November 1997, a manufacturer in Massachusetts received an order for a ferrograph analysis system from the Jabal General Trading Company in Dubai, UAE. In a fax to Jabal dated November 11, 1997, the manufacturer requested information relating to the end-use of the equipment and asked for assurances that the ferrograph system would not be shipped to a ''boycotted nation.'' Jabal responded that the end-user was in Dubai and that an engineer from the U.S. manufacturer should install the system at its facility. See, Declaration of David J. Poole ¶ 4 (Declaration and Exhibits).

On February 27, 1998, the U.S. manufacturer exported a ferrograph analysis system valued at $438,200, to Jabal in Dubai, UAE. Approximately one month after the shipment, an engineer from the U.S. manufacturer traveled to the UAE to install and test this system for Jabal Declaration, ¶ 5.

Shortly after the engineer's arrival in the UAE, he met with a man who identified himself as Mr. Ashraf of Jabal. An individual who identified himself as A.R. Massoudi accompanied Mr. Ashraf. Mr. Massoudi gave the engineer a business card that stated that Mr. Massoudi was the chairman of the Tavankav PJS Company in Iran. When the engineer questioned this, Mr. Massoudi said that he was a consultant working with the Jabal. Mr. Massoudi and Mr. Ashraf then took the engineer to a warehouse, not the end user's location, where the equipment was stored. When the engineer asked Mr. Massoudi why the ferrograph analysis system was being tested in a warehouse as it would usually be tested after installation at the end-user's premises, Mr. Ashraf said that his customer's facility was still being built. The engineer assembled the equipment and then demonstrated to Ashraf and Massoudi how the equipment should be used. Upon completion of the assembly and testing of the equipment, the engineer returned to the United States on or about April 5, 1998 Declaration ¶ 6.

The U.S. manufacturer had no further contact with Jabal until July 6, 1998. On that day, a person identifying himself as Mr. Massoudi called and asked to speak with the engineer. The engineer was unavailable but Mr. Massoudi asked that he contact him at his office in Dubai at 971–4–278–808, or on his cellular phone, number 98–911–228–15–004. Mr Massoudi called the U.S. manufacturer again on July 7, 1998, and this time reached Mr. Kelly and spoke to him about a problem with the ferrograph system. The problem described by Mr. Massoudi appeared to be related to the elevation at which the system was being used. When the engineer asked Massoudi if the system had been moved, Massoudi said that it had, but was reluctant to provide any details. Eventually, Massoudi admitted that the system had been moved to a location near Tehran, Iran Declaration ¶ 7.

On July 7, 1998, the U.S. manufacturer received an inquiry from

[1] The Export Administration Regulations are codified at 15 CFR part 730, *et seq.*

[2] Jabal had ample notice of its need to properly answer the amended charging letter. In addition to the ALJ's order, BXA made the following statement in the brief it filed with the amended charging letter, which it served on Jabal, and which alerted Jabal to its need to properly answer.

> BXA has no objection to the ALJ's decision to consider the June 19, 2001 letter from Jabal as an answer, but we note that the answer does not meet the requirements for a detailed response that are set out in the EAR. In light of the amended charges, BXA believes that Jabal must file another answer that specifically addresses each charge, lest the charges be deemed to have been admitted.

[3] While BXA's Motion is characterized as one for Recommended Decision its pleadings show it is both a motion for default under EAR Section 766.7, and a motion for Summary Decision under EAR Section 766.8.

Jabal concerning the purchase of spare parts for the ferrograph system. Declaration ¶ 8.

Sometime later, Massoudi again contacted the U.S. manufacturer and spoke with then engineer. During this conservation, Massoudi advised that he had corrected the problem with the system and expressed an interested in being a representative for the U.S. manufacturer in Iran. Declaration ¶ 9.

The U.S. manufacturer received a fax message on July 30, 1998, from the Tavankav PJS Company in Iran advising that Tavankav had purchased the U.S. manufacturer's equipment from Jabal in Dubai, and was following up on Mr. Massoudi's offer to represent the U.S. manufacturer in Iran. On October 7, 1998, Jabal again inquired about the purchase of spare parts for the system that was now in Iran. Declaration ¶ 10.

Neither the Bureau of Export Administration, nor the U.S. Treasury's Office of Foreign Assets Control (''OFAC'') authorized the shipment of the items in issue to Iran. Declaration ¶¶ 13 and 14, and Exhibit 11.

In its letter of June 19, 2001, Jabal claimed that it was only a financier based on an accompanying contract and copies of messages. Jabal also asserted that it was told the end user was in Dubai and the equipment was to be installed in Dubai. Jabal denied making any false or misleading statement.

*The Law*

A. Procedural

Given the nature of the procedural setting of this case, I find it appropriate to rule in the alternative. First, BXA is entitled to a finding that the facts in the amended charging letter are proven since Jabal has defaulted by not answering the Amended Charging Letter. Second, BXA is entitled to a summary decision according to EAR Section 766.8, because there are no genuine issues of material fact and thus is entitled to a judgement as a matter of law. Third, in reviewing all of the facts on the merits, BXA has established that the charges in the amended charging letter are proven.

It is clear from the Regulations that respondent's answer is critical to framing the factual issues in the case. There are no factual issues in dispute if the respondent has not presented an answer as required by this regulation. EAR Section 766.7 provides as follows:

The answer must be responsive to the charging letter and must fully set forth the nature of the respondent's defense or defenses. The answer must admit or deny specifically each separate allegation of the charging letter; if the respondent is without knowledge, the answer must so state and will operate as a denial. *Failure to deny or controvert a particular allegation will be deemed an admission of that allegation.* The answer must also set forth any additional or new matter the respondent believes supports a defense or claim of mitigation. *Any defense or partial defense not specifically set forth in the answer shall be deemed waived,* and evidence thereon may be refused, except for good cause shown. EAR Section 766.6(b) [Emphasis supplied].

While Jabal has answered, in part, the first charging letter, its failure to answer the amended charging letter is the critical element, which constitutes the default under EAR Section 766.7(a). Respondent Jabal has not answered the amended charging letter even after it was explicitly given the opportunity to do so. Therefore, I find that Jabal has defaulted in its failure to answer the amended Charging Letter, and thus find those charges to be as alleged in the Charging Letter and thus proven in accordance with EAR Section 766.7(a).

Even if Jabal is deemed to have answered certain allegations originally included in the first Charging Letter, its answer and supporting documentation raised no disputed issues of fact that prevent a finding for BXA under the summary decision procedures in EAR Section 766.8. This is because Jabal may not rest on its answer to oppose summary decision. It must make an affirmative showing on all matters placed in issue by BXA's motion as to which it has the burden of proof at trial.[4] A simple denial is insufficient.[5] See *Celotex Corporation* v. *Catrett,* 477 US 317, 323–324 (1986).

Simply put, Jabal has made no response to the BXA motion, and its earlier answer did not supply evidence that was significantly probative to raise a genuine issue of material fact, which would cause or be enough for the ALJ, as the trier of fact, to resolve the parties' differing versions of the truth.[6] See, *Avdin Corporation* v. *Loral Corporation,* 718 F.2d 897, 902 (9th Cir. 1983).

Consequently, I find there is no genuine issue as to any material fact, and BXA is entitled to a summary decision as a matter of law. EAR Section 766.8.

B. Export Control Law

While the EAR do not create a requirement to obtain an export license from BXA to ship goods, such as those here, from the United States to Iran, it does violate the EAR to export such goods from the United States to Iran without authority from the Office of Foreign Assets Control of the United States Department of the Treasury (OFAC). Thus, the gist of the offense here was exporting goods subject to the EAR without approval from OFAC.

The ferrography laboratory equipment that Jabal caused to be exported to Iran was of ''U.S. origin'' and was classified as EAR99.[7] The equipment was ''subject to the Export Administration Regulations'' as it was of U.S. origin. *See* EAR Section 734.3(a)(2). As described below, the export of this equipment to Iran violated provisions of the EAR precluding shipments to Iran of any item ''subject to the EAR'' without authorization from OFAC.

The licensing policy with respect to Iran is contained in EAR Section 746.7, which reads in pertinent part:

The Treasury Department's Office of Foreign Assets Control (OFAC) administers a comprehensive trade and investment embargo against Iran under the authority of the International Emergency Economic Powers Act of 1977, as amended, section 505 of the International Security and Development Cooperation Act of 1985, and Executive Orders 12957 and 12959 of March 15, 1995 and May 6, 1995, respectively. This embargo includes prohibitions on export and certain re-export transactions involving Iran, including transactions dealing with items subject to the EAR. (See OFAC's Iranian Transactions Regulations, 31 CFR part 560.) BXA continues to maintain licensing requirements on exports and re-exports to Iran under the EAR as described in paragraph (a)(2) of this section. *No person may export or re-export items subject to both the EAR and OFAC's Iranian Transactions Regulations without prior OFAC authorization.* Exports and re-exports subject to the EAR that are not subject to the Iranian Transactions Regulations may require authorization from BXA. [Emphasis supplied.][8]

The italicized portion of this provision, then, establishes a violation that has the following elements:

[4] Jabal affirmatively asserted in its answer it was only a financer and was told the end user was in Dubai. Jabal has the burden of showing these affirmative statements of fact at trial.

[5] Jabal denied making a false statement. The Amended Charging Letter no longer asserts that violation.

[6] For summary decision purposes, Jabal's answer to the first charging letter included three documents, when carefully read support the inference that Jabal aided and abetted the false representation to the U.S. manufacturer regarding the true identity and location of the end user causing an evasion of the EAR.

[7] *See* EAR Section 734.3(c). Items not on the Commerce Control List (CCL) but which are ''subject to the EAR'' are designated ''EAR 99.''

[8] This provision was added in 1996. The **Federal Register** notice that made the change said in part: ''This rule makes clear that enforcement action may be taken under the EAR with respect to an export or re-export prohibited both by the EAR and by the Executive Order and not authorized by OFAC.'' 61 FR 8471 (Mar. 5, 1996). This provision allows BXA's enforcement penalties, such as denial of export privileges, to supplement those available to OFAC.

(1) An export or re-export that is subject to the EAR, regardless whether it is on the CCL or classified as EAR99;

(2) That is also subject to OFAC's Iranian Transactions Regulations; and

(3) That does not have authorization from OFAC.

The transaction in this case was export from the United States to Iran that made a temporary stop in the UAE.[9] Section 560.204 of OFAC's Iran Transactions Regulations provided at the times relevant to this case:

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the exportation from the United States to Iran or the Government of Iran, or the financing of such exportation, of any goods, technology, or services is prohibited.[10]

The facts of this case demonstrate that the export alleged in the amended charging letter was subject to the EAR because the ferrography equipment was of U.S. origin, was subject to Iranian Transactions Regulations because it was an export to Iran, and did not have authorization from OFAC. These facts establish a violation of EAR Section 746.7 (''No person may export or re-export items subject to both the EAR and OFAC's Iranian Transactions Regulations without prior OFAC authorization.'')

Discussion

The four charges in this case are clearly proven. In charge 1, Jabal caused the good to be exported to Iran by ordering them from the U.S. supplier knowing that they were bound for Iran. Pursuant to EAR Section 734.2(b)(6), Jabal's intent that the goods ultimately go to Iran makes that an export to Iran under the EAR. There was no authorization for this export to Iran from OFAC. Consequently, the elements of this offense are proven.

Charge 2 alleges that Jabal, with knowledge of the illegal exportation of the goods as set out in charge 1, transferred them to Iran. EAR Section § 764.2(e) prohibits Jabal from taking this action with such knowledge. It is clear that Jabal knew that its customer was in Iran since the customer's representative, Mr. Massaoudi, was so closely connected to Jabal. Jabal's action of transferring the goods to Iran clearly proves charge 2.

Under charge 3, Jabal lied to the U.S. supplier because if the U.S. supplier knew the true facts, it would be required to obtain an export license, notify the authorities, or absent a license terminate the deal. Any of these actions would have circumvented Jabal's attempt to supply its Iranian customer. So Jabal's lie was intended to evade the provisions of the EAR and establishes that charge 3 was proven.

Charge 4 was another important step in Jabal's circumvention of U.S. export controls. Jabal had to gain the expertise to use the equipment but could not gain that expertise in Iran for feat that the U.S. supplier would alert the authorities. Consequently, Jabal arranged the assembly and testing of the goods at a warehouse in order to gain the necessary information on use of the equipment without detection of the true nature of the transaction. Again, Jabal evaded U.S. export controls.

The Penalty

In the Under Secretary's order of remand, he directed the ALJ to reconsider the recommended penalty in light of any new findings of fact or conclusions of law.

The Bureau of Export Administration has requested that all of Jabal's export privileges be denied for at least 10 years. A 10-year denial period is the appropriate sanction for several reasons. Under Section 764.3 of the Regulations, the only realistic sanctions available to BXA for the violations charged in this proceeding are a civil monetary penalty and a denial of export privileges. Jabal is located overseas, has not responded to the allegations set forth in the amended charging letter, or this motion, and has not demonstrated any interest in resolving this matter, either through the hearing process or through settlement. It is unlikely that Jabal would pay a civil monetary penalty willingly and BXA's ability to collect such a judgment is doubtful, rendering any judgment involving a civil monetary penalty meaningless.

Moreover, Jabal's violations are willful, blatant, and the result of an unlawful scheme. Finally, Jabal sent the ferrograph equipment to Iran, an embargoed country. Under all of these circumstances, I recommend a penalty of a 10-year denial of export privileges.

Conclusion

For these reasons, I recommend that you issue a *Decision* and *Order* as follows:

Dated: April 1, 2002.

**Edwin M. Bladen,**

*Administrative Law Judge.*

[FR Doc. 02–11581 Filed 5–10–02; 8:45 am]

BILLING CODE 3510–DT–M

[9] Pursuant to EAR Section 734.2(b)(6), an export that transits or transships one country for a new country or is intended for a new country is deemed to be an export to the new country.

[10] See also 15 CFR 742.8(a)(2) [export from the United States to any destination with knowledge that the items will be re-exported directly or indirectly in whole or in part to Iran is prohibited without a license from the Department of Treasury].

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–428–832, A–560–815, A–841–805]**

### Postponement of Final Antidumping Duty Determinations; Carbon and Certain Alloy Steel Wire Rod from Germany, Indonesia and Moldova

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

**ACTION:** Notice of Postponement of Final Antidumping Duty Determinations of Carbon and Certain Alloy Steel Wire Rod from Germany, Indonesia and Moldova.

**SUMMARY:** The Department of Commerce (the Department) is postponing the final determinations in the antidumping duty investigations of carbon and certain alloy steel wire rod from Germany, Indonesia and Moldova.

**EFFECTIVE DATE:** May 13, 2002.

**FOR FURTHER INFORMATION CONTACT:** Robert James at 202–482–0649 (Germany), Michael Ferrier at 202–482–1394 (Indonesia) or Scott Lindsay at 202–482–0780 (Moldova), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

#### Applicable Statute and Regulations

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

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

On April 10, 2002, the Department published the affirmative preliminary determinations for the investigation of carbon and certain alloy steel wire rod (steel wire rod) from Germany and Moldova, and a negative preliminary determination in the investigation of steel wire rod from Indonesia. *See*

*Notice of Preliminary Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Germany*, 67 FR 17384, *Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Indonesia*, 67 FR 17374, and *Carbon and Certain Alloy Steel Wire Rod from Moldova: Notice of Preliminary Determination of Sales at Less Than Fair Value* 67 FR 17401 (April 10, 2002).

Pursuant to section 735(a)(2) of the Tariff Act and section 351.210(b)(2)(ii) of the Department's regulations, on April 4, 2002, the respondent in the German case, Saarstahl AG (Saarstahl) requested the Department postpone the final determination in accordance with section 735(a)(2)(A) of the Tariff Act. Saarstahl also requested that the Department extend to six months any provisional measures imposed pursuant to section 733(d) of the Tariff Act. Similarly, on April 27, 2002, Moldova Steel Works requested the Department postpone the final determination in the Moldova case, agreeing to an extension of the provisional measures.

On April 11, 2002, pursuant to section 735(a)(2)(B) of the Tariff Act and section 351.210(b)(2)(i) of the Department's regulations, petitioners requested the Department postpone the final determination in the investigation of steel wire rod from Indonesia.[1]

Section 735(a)(2) of the Tariff Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative determination, a request for a postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

In accordance with 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determinations were affirmative with respect to Germany and Moldova, (2) the respondent requesting a postponement accounts for a significant proportion of exports of the subject merchandise from these countries, and (3) no compelling reasons for denial exist, we are granting Saarstahl's and Moldova Steel Works' requests for the postponement of the final determination in the cases involving Germany and Moldova. Furthermore, in accordance with 19 CFR 351.210(b)(i), because (1) our preliminary determination was negative with respect to Indonesia, (2) the petitioner requested a postponement and (3) no compelling reasons for denial exist, we are granting petitioners' request for a postponement in the Indonesian case.

We are postponing the final determinations in all three cases to no later than August 23, 2002, which is 135 days after the publication of the preliminary determination in the **Federal Register**. Where applicable, suspension of liquidation will be extended accordingly.

This notice of postponement is published pursuant to 19 CFR 351.210(g).

Dated: May 3, 2002.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 02–11923 Filed 5–10–02; 8:45 am]

**BILLING CODE 3510–DS–S**

[1] The margin in the Indonesian case was de minimis.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–560–802]**

### Certain Preserved Mushrooms from Indonesia: Final Results of Antidumping Duty Administrative Review

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

**ACTION:** Notice of Final Results of Antidumping Duty Administrative Review.

**SUMMARY:** On March 7, 2002, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain preserved mushrooms from Indonesia. The review covers three manufacturers/exporters of the subject merchandise to the United States: PT Dieng Djaya and PT Surya Jaya Abadi Perkasa,[1] PT Indo Evergreen Agro Business Corp., and PT Zeta Agro Corporation. The period of review is February 1, 2000, through January 31, 2001.

No interested party submitted comments on the preliminary results. We have made no changes to the margin calculation. Therefore, the final results do not differ from the preliminary results. The final weighted-average dumping margin for the three manufacturer/exporters are listed below in the ''Final Results of Review'' section of this notice.

**EFFECTIVE DATE:** May 13, 2002.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Trainor or Sophie Castro, AD/CVD Enforcement Group I, Office 2, Import Administration-Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4007, or 482–0588, respectively.

**SUPPLEMENTARY INFORMATION:**

#### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (April 2000).

#### Background

The review covers three manufacturers/exporters of the subject merchandise to the United States: PT Dieng Djaya and PT Surya Jaya Abadi Perkasa (Dieng/Surya), PT Indo Evergreen Agro Business Corp. (Indo Evergreen), and PT Zeta Agro Corporation (Zeta).

On March 7, 2002, the Department of Commerce published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on certain preserved mushrooms from Indonesia (67 FR 10366) (*Preliminary Results*).

We invited parties to comment on the preliminary results of the review. No interested party submitted comments. The Department has conducted this administrative review in accordance with section 751 of the Act.

#### Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus and Agaricus bitorquis.* ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are

[1] In accordance with 19 CFR 351.401(f), PT Dieng Djaya and PT Surya Jaya Abadi Perkasa were determined to be affiliated companies in the original less-than-fair-value investigation.

then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is currently classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the *Harmonized Tariff Schedule of the United States*[2](HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

**Final Results of the Review**

Our final results remain unchanged from the preliminary results. The following weighted-average margin percentages apply for the period February 1, 2000, though January 31, 2001:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| PT Dieng Djaya and PT Surya Jaya Abadi Perkasa | 0.59 |
| PT Indo Evergreen Agro Business Corp. | 0.09 (de minimis) |
| PT Zeta Agro Corporation | 0.27 (de minimis) |

**Assessment Rates**

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. In accordance with 19 CFR 351.106(c)(1), we will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above de minimis (i.e., less than 0.50 percent). For assessment purposes, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all U.S. sales examined and dividing this amount by the total entered value of the sales examined. In order to estimate the entered value, we will subtract applicable movement expenses from the gross sales value.

**Cash Deposit Requirements.**

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be those established above in the ''Final Results of Review'' section, except if the rate is less than 0.50 percent, and therefore, de minimis within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.26 percent, the ''All Others'' rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are published in accordance with sections 751(a)(1) of the Act and 19 CFR 351.221.

Dated: May 3, 2002

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 02–11922 Filed 5–10–02; 8:45 am]

BILLING CODE 3510–DS–S

[2] As of January 1, 2002, the HTS codes are as follows: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, 0711.51.0000

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–475–824]**

## Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy

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

**ACTION:** Notice of extension of time limit of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

**SUMMARY:** The Department of Commerce (''the Department'') is extending the time limit of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

**EFFECTIVE DATE:** May 13, 2002.

**FOR FURTHER INFORMATION CONTACT:** Juanita H. Chen at 202–482–0409, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Applicable Statute and Regulations**

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

**Background**

On July 2, 2001, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 66 FR 34910

(July 2, 2001). On July 31, 2001, ThyssenKrupp Acciai Speciali Terni S.p.A.[1] (''TKAST''), an Italian producer of subject merchandise, its affiliate, ThyssenKrupp AST USA[2] (''TKAST USA''), a U.S. importer of subject merchandise, and the petitioners from the original investigation requested the Department conduct an administrative review. On August 20, 2001, the Department published a notice of initiation of an administrative review of the antidumping duty order on subject merchandise, for the period July 1, 2000 through June 30, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 66 FR 43570 (August 20, 2001). On February 26, 2002, the Department extended the time limit for the preliminary results of this administrative review. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy,* 67 FR 9960 (March 5, 2002). The preliminary results of this administrative review are currently due no later than July 1, 2002.

**Extension of Time Limit for Preliminary Results**

Pursuant to section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the date on which the review was initiated. Due to the complexity of issues present in this administrative review, such as home market affiliated downstream sales, constructed export price versus export price, selling expenses, and complicated cost accounting issues, the Department has determined that it is not practicable to complete this review within the original time period provided in section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations. Therefore, we are extending the due date for the preliminary results, until no later than July 26, 2002. The final results continue to be due 120 days after the publication of the preliminary results.

[1] Formerly ''Acciai Speciali Terni S.p.A.''.

[2] Formerly ''Acciai Speciali Terni USA, Inc.''.

Dated: May 3, 2002.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Import Administration, Group III.*

[FR Doc. 02–11921 Filed 5–10–02; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 020418090–2090–01; I.D. 041202B]**

**RIN 0648–ZB19**

### Financial Assistance for Research and Development Projects to Assess the Potential Suitability of Non-native Oysters in Chesapeake Bay

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

**ACTION:** Notice of availability of funds.

**SUMMARY:** NMFS publishes this notice to solicit proposals for research and development projects that will address the potential suitability of *Crassostrea ariakensis* or other oysters for aquaculture in Chesapeake Bay. Through this notice, NMFS sets forth instructions on how to apply for financial assistance, and how NMFS will determine which applications will be selected for funding. A total of up to $100,000 in Fiscal Year (FY) 2002 funds is available through the NOAA/NMFS Chesapeake Bay Office for cooperative agreements.

**DATES:** Applications for funding under this program must be received by 5 p.m. eastern daylight savings time on June 12, 2002. Applications received after that time will not be considered for funding. Applications will not be accepted electronically nor by facsimile machine submission.

**ADDRESSES:** You can obtain an application package from, and send completed applications to: Mr. Derek Orner, National Marine Fisheries Service, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403. You can also obtain the application package from the NOAA Chesapeake Bay Office webpage. *http://noaa.chesapeakebay.net/*

**FOR FURTHER INFORMATION CONTACT:** Mr. Lowell Bahner or Mr. Derek Orner, National Marine Fisheries Service, NOAA Chesapeake Bay Office, 410/267–5660; or e-mail: *lowell.bahner@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

A. *Authority.* The Fish and Wildlife Act of 1956, as amended, at 16 U.S.C. 753a, authorizes the Secretary of Commerce (Secretary), for the purpose of developing adequate, coordinated, cooperative research and training programs for fish and wildlife resources, to continue to enter into cooperative agreements with colleges and universities, with game and fish departments of the several states, and with non-profit organizations relating to cooperative research units. The Secretary of Commerce is authorized under the Fish and Wildlife Coordination Act, 16 U.S.C. 661–666c, to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of fisheries resources thereof, and for fisheries habitat restoration. The Departments of Commerce (DOC), Justice, State, the Judiciary, and Related Agencies Appropriations Act of 2002 (Pub. L. 107–77, 115 Stat.748) makes funds available to the Secretary.

B. *Catalog of Federal Assistance (CFDA).* The activities requested are listed in the ''Catalog of Federal Domestic Assistance'' under number 11.457, entitled Chesapeake Bay Studies.

C. *Research Initiative Description.* The Eastern oyster, *Crassostrea virginica*, has been a major fishery in Chesapeake Bay for nearly three centuries. In the late 1950's, MSX spread into the lower Chesapeake Bay devastating native populations of the eastern oyster. By the 1970's, MSX had wiped out vast tracts of oysters in Virginia. In the 1980's, Dermo joined MSX in decimating the native oyster population. Together, both diseases have frustrated restoration and aquaculture efforts and have brought the oyster fishery to near demise.

Several workshops were convened in the Chesapeake Bay region to explore options for countering the effects of these diseases. These workshops focused on specific topics such as research needs to combat MSX and Dermo (see the National Oyster Disease Research Program), socio-economic issues related to the oyster industry and the ecological and genetic implications of introducing non-native oyster species. Initial experimentation was conducted on *C. gigas* but has recently moved toward investigations of another Asian species, *C. ariakensis.* This research initiative seeks to garner information to make scientifically-based resource management decisions.

D. *Funding Availability.* This document describes how interested persons can apply for funding under this initiative and how funding decisions will be made.

This solicitation announces that funding of up to $100,000 may be available through the NOAA Chesapeake Bay Office. This announcement does not guarantee that sufficient funds will be available to make awards for all selected applications submitted under this program.

**II. Research Priorities**

Proposals should exhibit familiarity with related work that is completed or ongoing. Where appropriate, proposals should be multi-disciplinary. Coordinated efforts involving multiple eligible applicants or persons are encouraged. Proposals must address one of the priorities listed here. If the proposal addresses more than one priority, it should list first on the application the priority that most closely reflects the objective of the proposals.

(A) Consideration for funding will be given to applications that address the following priorities for C. ariakensis and/or other potentially suitable oysters for aquaculture in Chesapeake Bay. Due to the risks of accidental release of non-native organisms into Chesapeake Bay, in-water testing may need to be conducted outside Chesapeake Bay and in waters native to the organism being evaluated, or in closed systems with adequate safety controls. Proposals should clearly explain the safe guards that would be used. Proposals should also explain any needs for obtaining or conducting an Environmental Assessment (EA) or Environmental Impact Statement (EIS) to comply with National Environmental Policy Act or National Invasive Species Act or other relevant Federal or state requirements, since these would have a direct impact on whether or not the work could be conducted. Proposals may include:

(1) Assessment of the biological and physiological requirements of the oyster with regard to its potential as a fishery and for creating habitat suitable to Chesapeake Bay. Proposals may include life history characteristics, stock recruitment characteristics, environmental requirements, growth rates, reproductive rates and capacity, geographic range, capacity for reef building, reef structure, value as habitat, screening of potential pathogens, disease susceptibility, causes of mortality, predators and predation, filtering capacity, and other environmental considerations relevant to the growth and survival of a viable culture or stock.

(2) Comparison of oysters that can reproduce with those that can not (sterile). Proposals may include comparisons of growth rates, value as habitat, disease susceptibility, causes of mortality, predators and predation, filtering capacity, and other factors relevant to the comparison.

(3) Evaluation of benefits and risks associated with culturing or releasing non-native oysters in Chesapeake Bay. Proposals may include the economic benefits and risks to the commercial and recreational sectors, role of watermen in aquaculture or restoration, potential for spreading disease, potential for becoming invasive, potential for competition with native species, potential for cross-breeding or genetic mixing, potential for fouling boats, engines, pilings, marinas, pumps, wires, and pipes, comparison of non-reproductive organisms with reproductively capable organisms for aquaculture or wide-scale restoration, capacity as habitat or fishery, potential reversion from non-reproductive (sterile) to reproductive (non-sterile) state, and the potential to spread naturally to adjacent waters, including the Atlantic Ocean, Coastal Bays, Gulf Coast and East and Gulf Coast bays and estuaries.

**III. How to Apply**

A. *Eligible Applicants.* Eligible applicants are institutions of higher education, hospitals, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

The Department of Commerce National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs.

B. *Duration and Terms of Funding.* Under this solicitation, NMFS will fund 12 month cooperative agreements. The cooperative agreement has been determined to be the appropriate funding instrument because of the substantial involvement of NMFS in:

1. Developing program research priorities;

2. Evaluating the performance of the program for effectiveness in meeting regional goals for Chesapeake Bay management entities;

3. Monitoring the progress of each funded project;

4. Holding periodic workshops with investigators; and

5. Working with recipients to prepare annual reports summarizing current research efforts with the NOAA Chesapeake Bay Office.

Project dates should be scheduled to begin no later than 1 October 2002. Cooperative agreements are approved on an annual basis but may be considered eligible for continuation beyond the first project and budget period subject to the approved scope of work, satisfactory progress, and availability of funds at the total discretion of NMFS. However, there are no assurances for such continuation. Publication of this document does not obligate NMFS to award any specific cooperative agreement or to obligate any part of the entire amount of funds available.

C. *Cost-sharing Requirements.* Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost-sharing is not required but is encouraged.

D. *Format.* 1. Applications for project funding must be complete and must follow the format described in this document.

Applicants must identify the specific research priority or priorities to which they are responding. If the proposal addresses more than one priority, it should list first on the application the priority that most closely reflects the objective of the proposals. For applications containing more than one project, each project component must be identified individually using the format specified in this section. If an application is not in response to a priority, it should so state. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the application.

Applications must not be bound and must be one-sided. All incomplete applications will be returned to the applicant. Applicants are required to submit 1 signed original and 2 copies of the proposal.

2. Applications must be submitted in the following format:

(a) *Cover sheet:* An applicant must use OMB Standard Form 424 (revised July 1997) as the cover sheet for each project. Applicants may obtain copies of these forms from the NOAA Grants Management Division, the NOAA Chesapeake Bay Office (see **ADDRESSES**) from the NOAA Grants website, *http://www.rdc.noaa.gov/grants/*.

(b) *Project summary:*It is recommended that each proposal contain a summary of not more than one page that provides the following:

(1) Project title.

(2) Project status (new vs. continuation).

(3) Project duration (beginning and ending dates).

(4) Name, address, and telephone number of applicant.

(5) Principal Investigator(s) (PI).

(6) Project objectives.

(7) Summary of work to be performed.

(8) Total Federal funds requested.

(9) Cost-sharing to be provided from non-Federal sources, if any. Specify whether contributions are project-related cash or in-kind.

(10) Total project cost.

(c) *Project description* (including results from prior support): Each project must be completely and accurately described. The main body of the proposal should be a clear statement of the work to be undertaken and should include: specific objectives and performance measures for the period of the proposed work and the expected significance; relation to longer-term goals of the PI's project; and relation to other work planned, anticipated, or underway under Federal Assistance. The project description must not exceed 15 pages in length. Visual materials, including charts, graphs, maps, photographs and other pictorial presentations are not included in the 15-page limitation. If an application is awarded, NMFS will make all portions of the project description available to the public for review; therefore, NMFS cannot guarantee the confidentiality of any information submitted as part of any project, nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows:

(1) *Identification of problem(s):* Describe the specific problem to be addressed (see section II above).

(2) *Project objectives:*The project description must identify the following three project objectives: a. Identify the specific priority listed earlier in the solicitation to which the proposed projects respond, if any. b. Identify the problem/opportunity you intend to address and describe its significance to the fishing community. c. State what you expect the project to accomplish.

If you are applying to continue a project previously funded under the Chesapeake Bay Fisheries Research Program, describe in detail your progress to date and explain why you need additional funding.

Objectives should be:

(a) Simple and easily understandable.

(b) As specific and quantitative as possible.

(c) Clear with respect to the ''what and when'' and should avoid the ''how and why.''

(d) Attainable within the time, money, and human resources available.

(e) Use action verbs that are accomplishment oriented.

(f) Identify specific performance measures.

(3) *Results from Prior Chesapeake Bay Fisheries Research Support:*If any Principal Investigator (PI) or co-PI identified on the project has received NOAA Chesapeake Bay Office support in the past 5 years, information on the prior award(s) is required. The following information must be provided:

(a) The NOAA award number, amount and period of support;

(b) The title of the project;

(c) Summary of the results of the completed work, including, for a research project, any contribution to the development of human resources in science/biology;

(d) Publications resulting from the award;

(e) Brief description of available data, samples, physical collections and other related research products not described elsewhere; and

(4) *Need for Government financial assistance:* Demonstrate the need for assistance. Any appropriate database to substantiate or reinforce the need for the project should be included. Explain why other funding sources cannot fund all the proposed work. List all other sources of funding that are or have been sought for the project.

(5) *Benefits or results expected:* Identify and document the results or benefits to be derived from the proposed activities.

(6) *Project statement of work:* The Statement of Work is the scientific or technical action plan of activities that are to be accomplished during each budget period of the project. This description must include the specific methodologies, by project job activity, proposed for accomplishing the proposal's objective(s).

Investigators submitting proposals in response to this announcement are strongly encouraged to develop inter-institutional, inter-disciplinary research teams in the form of single, integrated proposals or as individual proposals that are clearly linked together. Such collaborative efforts will be factored into the final funding decision.

Each Statement of Work must include the following information:

(a) The applicant's name.

(b) The inclusive dates of the budget period covered under the Statement of Work.

(c) The title of the proposal.

(d) The scientific or technical objectives and procedures that are to be accomplished during the budget period. A detailed set of objectives and procedures to answer who, what, how, when, and where. The procedures must be of sufficient detail to enable competent workers to be able to follow them and to complete scheduled activities.

(e) Location of the work.

(f) A list of all project personnel and their responsibilities.

(g) A milestone table that summarizes the procedures (from item III.D.2.c(5)(d)) that are to be attained in each project month covered by the Statement of Work. Table format should follow sequential month rather than calendar month (i.e. Project period Month 1, Month 2... versus October, November ...)

(7) *Federal, state and local government activities:* List any programs (Federal, state, or local government or activities, including Sea Grant, state Coastal Zone Management Programs, NOAA Oyster Disease Research Program, the state/Federal Chesapeake Bay Program, etc.) this project would affect and describe the relationship between the project and those plans or activities.

(8) *Project management:* Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved with the project. If a consultant and/or subcontractor is selected prior to application submission, include the name and qualifications of the consultant and/or subcontractor and the process used for selection.

(9) *Monitoring of project performance:* Identify who will participate in monitoring the project.

(10) *Project impacts:* Describe how these products or services will be made available to the fisheries and management communities.

(11) *Evaluation of project:* The applicant is required to provide an evaluation of project accomplishments and progress towards the project

objectives and performance measures at the end of each budget period and in the final report. The application must describe the methodology or procedures to be followed to determine technical feasibility, or to quantify the results of the project in promoting increased production, product quality and safety, management effectiveness, or other measurable factors.

(12) *Total project costs:* Total project costs is the amount of funds required to accomplish what is proposed in the Statement of Work, and includes contributions and donations. All costs must be shown in a detailed budget. A standard budget form (SF-424A) is available from the offices listed and on the internet (see **ADDRESSES**). NMFS will not consider fees or profits as allowable costs for grantees. Additional cost detail may be required prior to a final analysis of overall cost allowability, allocability, and reasonableness. The date, period covered, and findings for the most recent financial audit performed, as well as the name of the audit firm, the contact person, and phone number and address, must be also provided.

(d) *Supporting documentation:* Provide any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed, but should be no more than 20 pages. The applicant should present any information that would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in lower ranking of the project. Information presented in this section should be clearly referenced in the project description.

**IV. Review Process and Criteria**

A. *Initial Evaluation of Applications.* Applications will be reviewed by NOAA to assure that they meet all requirements of this announcement. Proposals that do not support the research priorities as defined in section II. above will not be considered for funding.

B. *Consultation with Experts in the Field of Fisheries Research and Invasive Species.* For applications meeting the requirements of this solicitation, NMFS will conduct an individual technical evaluation (via mail/electronic mail) of each project. This review normally will involve experts from both NOAA and non-NOAA organizations. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. Reviewers will be asked to score and comment based on the following four criteria (total of 50 possible points):

1. Problem description and conceptual approach for resolution, especially the applicant's comprehension of the problem(s), familiarity with related work that is completed or ongoing, and the overall concept proposed to resolve the problem(s) (15 points).

2. Soundness of project design/technical approach, especially whether the applicant provided sufficient information to technically evaluate the project and, if so, the strengths and weaknesses of the technical design proposed for problem resolution (20 points).

3. Project management and experience and qualifications of personnel, including organization and management of the project, and the personnel experience and qualifications (5 points).

4. Justification and allocation of the budget in terms of the work to be performed (10 points).

C. *Review Panel.* NMFS will convene a review panel consisting of at least three regional experts (both NOAA and non-NOAA panelists) in the scientific and management aspects of fisheries and invasive species research.

Each individual panel member will:

1. Provide independent review based on the same criteria and scoring as the technical review.

2. Provide a numerical ranking of all submitted proposals and suggestions for modifications (i.e., budget, personnel, technical approach, etc.).

The review panel will collectively:

1. Discuss all review comments as a panel incorporating the evaluation provided by the technical reviewers.

D. *Funding Decision.* After applications have been evaluated and ranked numerically by the review panel, the Director of the NOAA/NMFS Chesapeake Bay Office, in consultation with NOAA Chesapeake Bay Office staff and the Assistant Administrator (AA) for Fisheries, NOAA, will determine the projects to be recommended for funding based upon the technical evaluations and panel review comments, and determine the amount of funds available for the program. Numeric ranking will be the primary consideration for deciding which of the proposals will be selected for funding. In making the final selections, NOAA/NMFS may consider costs, geographical distribution, inter-jurisdictional and inter-institutional collaboration and duplication with other federally funded projects. Accordingly, numerical ranking is not the sole factor in deciding which proposals will be selected for funding. The Director of the NOAA/NMFS Chesapeake Bay Office will prepare a written justification for any recommendations for funding that fall outside the ranking order, or for any cost adjustments. The exact amount of funds awarded to each project will be determined in preaward negotiations between the applicant, the Grants Office, and the NOAA/NMFS Chesapeake Bay Office staff. Potential grantees should not initiate projects in expectation of Federal funding until an award document signed by an authorized NOAA official has been received.

E. Applications not selected for funding will be held in the Program Office for a period of at least 12 months.

**V. Administrative Requirements**

A. *Obligations of the Applicant*

Periodic Workshops—Investigators will be expected to prepare for and attend one or two workshops with other Fisheries Research Program researchers to encourage interdisciplinary dialogue and collaboration.

B. *Other Requirements*

1. *Indirect Cost Rates*—The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal government. Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the recipient shall be the lesser of the line item amount for the Federal share of indirect costs contained in the approved budget of the award, or the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by an oversight or cognizant Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date. However, the Federal share of the indirect costs may not exceed 25 percent of the total proposed direct costs for this Program. Applicants with indirect costs above 25 percent may use the amount above the 25 percent level as cost sharing. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

2. The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice

of October 1, 2001 (66 FR 49917), are applicable to this solicitation. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget, in light of a court opinion which found that the Executive Order was not legally authorized. See *Building and Construction Trades Department* v. *Allbaugh*, 172 F. Supp. 2d 138 (D.D.C 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

3. *Financial Management Certifications/preaward Accounting Survey*—Successful applicants, at the discretion of the NOAA Grants Officer, may be required to have their financial management systems certified by an independent public accountant as being in compliance with Federal standards specified in the applicable Office of Management and Budget (OMB) Circulars prior to execution of the award. Any first-time applicant for Federal grant funds may be subject to a preaward accounting survey by the DOC specified in the applicable OMB Circulars/Code of Federal Regulations prior to execution of the award.

**Classification**

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

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Pursuant to Section 553(a)(2) of the Administrative Procedure Act, prior notice and an opportunity for public comment are not required for this notification concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act 5 U.S.C. 601 *et seq.*

This document contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms (SF) 424 and 424A have been approved by OMB under their respective control numbers 0348–0043 and 0348–0044. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: May 7, 2002.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

[FR Doc. 02–11928 Filed 5–10–02; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

*Name of Committee:* Army Science Board (ASB).

*Date(s) of Meeting:* 21 & 22 May 2002.

*Times(s) of Meeting:* 0900–1700, 21 May 2002, 0900–1300, 22 May 2002.

*Place:* SAIC.

1. The Acquisition and Technology Panel, Army Science Board FY02 Summer Study on ''Affordability of the Objective Force'' is holding a meeting on 21–22 May 2002. The meeting will be held at SAIC, 1710 SAIC Drive, McLean, VA. The meeting will begin at 0900 hrs on the 21st and will end at approximately 1300 hrs on the 22nd. for further information, please contact Tom Conway—703–617–9438 or e-mail: *TCONWAY@hqamc.army.mil.*

**Wayne Joyner,**

*Program Suppport Specialist, Army Science Board.*

[FR Doc. 02–11812 Filed 5–10–02; 8:45 am]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

*Name of Committee:* Army Science Board (ASB).

*Date(s) of Meeting:* 16 & 17 May 2002.

*Time(s) of Meeting:* 0900–1700, 16 May 2002, 0900–1700, 17 May 2002.

*Place:* Lockheed Martin.

1. The Infrastructure Panel, Army Science Board FY02 Summer Study on ''*Ensuring the Financial Viability of the Objective Force*'' is holding a meeting on 16–17 May 2002. The meeting will be held at Lockheed Martin, 1725 Jefferson Davis Highway, Suite 900, Arlington, VA. The meeting will begin at 0900 hrs on the 16th and will end at approximately 1700 hrs on the 17th. For further information, please contact William Hansen—703–266–3970 or e-mail: *william.hansen@lmco.com.*

**Wayne Joyner,**

*Program Support Specialist, Army Science Board.*

[FR Doc. 02–11813 Filed 5–10–02; 8:45 am]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF EDUCATION

**[CFDA Nos. 84.133S and 84.305S]**

### Office of Special Education and Rehabilitative Services (OSERS) and the Office of Educational Research and Improvement (OERI); Small Business Innovation Research (SBIR) Program—Phase I Notice Inviting Grant Applications for New Awards for Fiscal Year (FY) 2002

*Note to Applicants:* Beginning in FY 2002, OSERS and OERI are switching from contracts to grants to conduct the Department's SBIR Phase I competition.

*Purpose of Program:* The purpose of this program is to stimulate technological innovation in the private sector, strengthen the role of small business in meeting Federal research or research and development (R/R&D) needs, increase the commercial application of Department of Education (ED) supported research results, and improve the return on investment from Federally-funded research for economic and social benefits to the Nation.

For FY 2002, we encourage applicants to present activities that focus on the invitational priorities in the PRIORITIES section of this application notice.

*Eligible Applicants:* Each organization submitting an application must qualify as a small business concern as defined by the Small Business Administration (SBA) at the time of the award. This definition is included in the application package.

Firms with strong research capabilities in educational and assistive technologies, science, or engineering in any of the priority areas listed are encouraged to participate. Consultative or other arrangements between these firms and universities or other non-profit organizations are permitted, but the small business must serve as the grantee.

If it appears that an applicant organization does not meet the eligibility requirements, we will request an evaluation by the SBA. Under circumstances in which eligibility is unclear, we will not make an SBIR award until the SBA makes a determination.

*Applications Available:* May 15, 2002.

*Deadline for Transmittal of Applications:* July 10, 2002.

*Estimated Available Funds:* Up to $4,200,000 for new Phase I awards.

The estimated amount of funds available for new Phase I awards is based upon the threshold SBIR allocation for OSERS and OERI, minus prior commitments for Phase II continuation awards. The actual funds available could be less, should either office make any new Phase II awards (contracts) in FY 2002.

*Estimated Average Size of Awards:* Up to $75,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $75,000 for a single budget period of 6 months.

*Estimated Number of Awards:* 40.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 6 months.

*Page Limits:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit your application narrative to the equivalent of no more than 25 pages, excluding any documentation of prior multiple Phase II awards, if applicable; and attachments responding to the ''Assurances, Certifications, and Disclosures'' section of the application package. The following standards should be used:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Single space all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller that 10 pitch (characters per inch). Standard black type should be used to permit photocopying.
- Draw all graphs, diagrams, tables, and charts in black ink. Do not include glossy photographs, or materials that cannot be photocopied, in the body of the application.

The application package will provide instructions for completing all components to be included in the application. Each application must include an application cover sheet (ED Standard Form 424); an abstract or summary page; a description of the technical content, staff qualifications, facilities and equipment, budget requirements (ED Form 524 or facsimile), and related application(s) or award(s); and documentation of multiple Phase II awards.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

**Applicable Statutes and Regulations**

(a) *Statutes.* The Small Business Reauthorization Act of 2000, Pub. L. 106–554 (15 U.S.C. 631 and 638); Title II of the Rehabilitation Act of 1973, as amended, Pub. L. 105–220 (29 U.S.C. 760–764); The Educational Research, Development, Dissemination, and Improvement Act of 1994, Pub. L. 103–227 (20 U.S.C. 6001 *et seq*.

(b) *Regulations—General Applicability.* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, 97, and 98.

(c) *Regulations—Limited Applicability.* For OERI, its program regulations in 34 CFR part 700 (except for subpart D-Evaluation Criteria).

*Note on Peer Review Procedures:* OSERS and OERI will apply their own requirements. (1) For OSERS, the requirements are contained in 29 U.S.C. 760 and 762(f); (2) For OERI, the requirements are contained in 34 CFR part 700, subparts B and C.

**Priorities**

For FY 2002, we have selected 10 priorities for the SBIR program. SBIR projects are encouraged to look to the future by exploring uses of technology to ensure equal access to education and promote educational excellence throughout the nation.

The application package will include a number of examples to illustrate the kinds of activities that could be funded under each priority. Specific examples are listed only as examples of advanced applications or basic research of interest to us, and they are not to be interpreted as exclusive. We intend to provide sufficient flexibility to obtain the greatest degree of creativity and innovation possible, consistent with overall SBIR and ED program objectives.

An application should be limited to one priority listed in this notice. When an application is relevant to more than one priority, the applicant should decide which priority is most relevant and submit it under that priority only. However, there is no limitation on the number of different applications that an applicant may submit under this competition, even to the same priority. A firm may submit separate applications on different priorities, or different applications on the same priority, but each application should respond to only one priority. Duplicate applications will be returned without review.

**Invitational Priorities**

We are particularly interested in applications that meet one of the following priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets one of these priorities a competitive or absolute preference over other applications.

*CFDA Number 84.133S: The Office of Special Education and Rehabilitative Services (OSERS)*

The following seven priorities relate to innovative research utilizing new technologies (including nanotechnologies and biotechnologies) to address the needs of individuals with disabilities and their families.

*Priority 1*—Development of Technology to Support Access and Integration of Individuals with Disabilities in the Community, Workplace, or Educational Setting.

*Priority 2*—Research and Development of Technology to Improve the Sensory or Motor Health of Individuals with Disabilities.

*Priority 3*—Research and Development of Assistive Technology to Improve the Function of Individuals with Disabilities of All Ages.

*Priority 4*—Research and Development of Technology to Improve School to Work Transition and Employment Outcomes for Individuals with Disabilities.

*Priority 5*—Research in Positive Behavioral Supports or Behavioral Health Care to Support Independent Living/Community Integration and Participation in Educational and Vocational Activities.

*Priority 6*—Research and Development of Technology in Support of Early Intervention for Infants, Toddlers, and Small Children.

*Priority 7*—Research and Development of Outcome Measurements Related to Use of Disability and Rehabilitation Technologies in Medical, Community, Home, Transportation, Educational, or Employment Settings.

*CFDA Number 84.305S: The Office of Educational Research and Improvement (OERI)*

The following three priorities focus on student achievement of at-risk students in pre-kindergarten to postsecondary education and adult learning.

*Priority 8*—Development and Adaptation of Innovative Technologies to Improve Instruction, Learning, and Achievement in Reading, Mathematics, and Sciences.

*Priority 9*—Development and Adaptation of Innovative Technologies

to Support High Standards and Accountability through Testing, Assessment, and Evaluation.

*Priority 10*—Development and Adaptation of Innovative Technologies to Improve the Involvement of Parents and Communities in Education and to Use Resources Effectively for Student Learning and Education Reform.

*Selection Criteria:* Under 34 CFR 75.210, we use the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) Quality of Project Design (45 points).

(b) Significance (25 points).

(c) Quality of Project Personnel (20 points).

(d) Adequacy of Resources (10 points).

We will make awards based upon these selection criteria and the availability of funds. In the evaluation and handling of applications, we will make every effort to protect the confidentiality of the application and any evaluations.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Small Business Reauthorization Act (the ''Act'') of 2000 was enacted on December 21, 2000. The Act requires certain agencies, including the Department of Education, to establish SBIR programs by reserving a statutory percentage of their extramural research and development budgets to be awarded to small business concerns for research or R&D through a uniform, highly competitive three-phase process.

The three phases of the SBIR program are:

*Phase I:* Phase I is to determine, insofar as possible, the scientific or technical merit and feasibility of ideas submitted under the SBIR program. The application should concentrate on research that will significantly contribute to proving the scientific or technical feasibility of the approach or concept and that would be prerequisite to further ED support in Phase II.

*Phase II:* Phase II is to expand on the results of and to further pursue the development of Phase I projects. Phase II is the principal research or R&D effort. It requires a more comprehensive application, outlining the effort in detail including the commercial potential. Phase II applicants must be Phase I awardees with approaches that appear sufficiently promising as a result of Phase I. Awards are for periods up to 2 years in amounts up to $500,000 (beginning in FY 2003).

*Phase III:* In Phase III, the small business must use non-SBIR capital to pursue commercial applications of the research or research and development. Also, under Phase III, Federal agencies may award non-SBIR follow-on funding for products or processes that meet the needs of those agencies.

**FOR APPLICATIONS AND FURTHER INFORMATION CONTACT:** *For General Information:* Lee Eiden, U.S. Department of Education, 555 New Jersey Avenue, NW., room 508D, Washington, DC 20208–5644. Telephone (202) 219–2004 or via Internet: lee.eiden@ed.gov.

*For Priorities 1–7 (OSERS):* Kristi Wilson, U.S. Department of Education, 330 ''C'' Street, SW., room 3433, Washington, DC 20202–2572. Telephone (202) 260–0988 or via Internet: *kristi.wilson@ed.gov.*

*For Priorities 8–10 (OERI):* Ram Singh, U.S. Department of Education, 555 New Jersey Avenue, NW., room 514, Washington, DC 20208–5573. Telephone (202) 219–2025 or via Internet: *ram.singh@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to either of the program contact persons listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT**.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting one of the contact persons listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT**. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on the GPO Access at: *http://www.access.gpo.gov/nara/index.html*

**Program Authority:** Pub. L. 106–554 (The Small Business Reauthorization Act of 2000); Pub. L. 105–220 (Title II of the Rehabilitation Act of 1973, as amended); and Pub. L. 103–227 (The Educational Research, Development, Dissemination, and Improvement Act of 1994).

Dated: May 8, 2002.

**Robert H. Pasternack,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

**Grover J. Whitehurst,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 02–11924 Filed 5–10–02; 8:45 am]

**BILLING CODE 4000–01–U**

## DEPARTMENT OF EDUCATION

### Federal Interagency Coordinating Council Meeting

**AGENCY:** Department of Education.

**ACTION:** Notice of a public meeting.

**SUMMARY:** This notice describes the schedule and agenda of the forthcoming meeting of the Federal Interagency Coordinating Council (FICC). Notice of this meeting is intended to inform members of the general public of their opportunity to attend the meeting. The FICC will engage in ongoing policy discussions related to young children with disabilities and their families. Child care for young children with disabilities and their families will be the topic of this FICC meeting. The meeting will be open and accessible to the general public.

FICC committee meetings will be held on June 12, 2002 in the Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202.

**DATE AND TIME:** FICC Meeting: Thursday, June 13, 2002 from 9 a.m. to 4:30 p.m.

**ADDRESSES:** U.S. Department of Education, Departmental Auditorium, 400 Maryland Avenue, SW., Washington, DC 20202 (near the Federal Center Southwest and L'Enfant metro stops).

**FOR FURTHER INFORMATION CONTACT:** Bobbi Stettner-Eaton or Obral Vance, U.S. Department of Education, 330 C Street, SW., Room 3080, Switzer Building, Washington, DC 20202. Telephone: (202) 205–5507 (press 3). Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5637.

**SUPPLEMENTARY INFORMATION:** The FICC is established under section 644 of the

Individuals with Disabilities Education Act (20 U.S.C. 1444). The FICC is established to: (1) Minimize duplication across Federal, State, and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by Dr. Robert H. Pasternack, Assistant Secretary for Special Education and Rehabilitative Services.

Individuals who need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Obral Vance at (202) 205–5507 (press 3) or (202) 205–5637 (TDD) ten days in advance of the meeting. The meeting location is accessible to individuals with disabilities.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW., Room 3080, Switzer Building, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

**Loretta L. Petty,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 02–11797 Filed 5–10–02; 8:45 am]

**BILLING CODE 4000–01–M**

## DEPARTMENT OF EDUCATION

### President's Commission on Excellence in Special Education

**AGENCY:** President's Commission on Excellence in Special Education, Department of Education.

**ACTION:** Notice of public meetings.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of two forthcoming meetings of the President's Commission on Excellence in Special Education (Commission). This notice also describes the functions of the Commission. Notice of these meetings are required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

**DATES:** May 30 and 31, 2002, June 12 and 13, 2002.

**TIME:** 9:00 a.m. to 5:00 p.m. each day.

**ADDRESSES:** The two Commission meetings will be held in Washington, DC. However, the specific locations for each meeting are not now determined. The Commission will make the specific location for each meeting available on its website as soon as meeting space is secured.

**FOR FURTHER INFORMATION CONTACT:** C. Todd Jones, Executive Director, or Troy R. Justesen, Deputy Executive Director, at (202) 208–1312. The fax number is (202) 208–1593 and e-mail address is *troy.justesen@ed.gov* or via the Commission's web site at: *http://www.ed.gov/inits/commissionsboards/whspecialeducation/sitemap.html*

**SUPPLEMENTARY INFORMATION:** The Commission is established under Executive Order 13227 dated October 2, 2001. The Commission's function is to collect information and study issues related to Federal, State, and local special education programs with the goal of recommending policies for improving the educational performance of students with disabilities. In furtherance of its duties, the Commission shall invite experts and members of the public to provide information and guidance. The Commission shall prepare and submit a report to the President outlining its findings and recommendations.

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, materials in alternative format) should notify Troy R. Justesen, at (202) 219–0704, as soon as possible. Sign language interpreter services will be provided at all meetings. The meeting site will be accessible to individuals with mobility impairments, including those who use wheelchairs.

Unlike all other Commission meetings and hearings, these meetings will not provide a public comment period.

Records are kept of all Commission proceedings, and are available for public inspection at President's Commission on Excellence in Special Education, 80 F Street, NW, Suite 408, Washington, DC 20208 from the hours of 9 a.m. to 5 p.m. (EST). This notice will not meet the 15-day FACA requirement for announcing meetings in the **Federal Register**; however, a previous notice was printed indicating the date of the upcoming meeting. The notice gives the public more information about the agenda and actual location of the meeting that was not available at the first printing.

**Electronic Access to This Document**

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**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

**Robert H. Pasternack,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 02–11814 Filed 5–10–02; 8:45 am]

**BILLING CODE 4000–01–M**

## DEPARTMENT OF ENERGY

### National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

**AGENCY:** National Energy Technology Laboratory, Department of Energy (DOE).

**ACTION:** Notice of Availability of a Financial Assistance Solicitation.

**SUMMARY:** Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE-PS26–02NT15375 entitled ''Public Resources Invested in Management and Extraction (PRIME) .'' The Department of Energy (DOE) National Energy Technology Laboratory (NETL), on behalf of its National Petroleum Technology Office (NPTO), seeks applications for cost-shared long-term (7–10 years), high-risk research and development (R & D), including fundamental research and optimization of important, state-of-the art oil/gas technologies, for future applications on

domestic areas including on state and federal lands and waters. These longer-term, high-risk research activities emphasize new concepts and/or approaches that may lead to significant revolutionary (i.e., not evolutionary) advancements in the state-of-the-art oil/gas technology by reducing risks, costs, and environmental impacts associated with finding and producing U.S. petroleum resources. The projects in this program may be designed to yield specific solutions to exploration and production problems including issues of public lands, and allowing real returns from these lands and waters while preserving the Nation's asset.

The goal is to develop world class technologies that will provide the domestic industry a leadership role in discovery and the development of undiscovered or previously unattainable resources. This new initiative will focus longer-term fundamental R&D in the following three broad areas: (1) Oil and Gas Recovery Technology, (2) Advanced Drilling, Completion, Stimulation, and Operations (ADCS), or (3) Advanced Diagnostic and Imaging Systems (ADIS) and Reservoir Characterization.

**DATES:** The solicitation will be available on the DOE/NETL's Internet address at *http://www.netl.doe.gov/business* and on the ''Industry Interactive Procurement System'' (IIPS) webpage located at *http://e-center.doe.gov* on or about May 31, 2002.

**FOR FURTHER INFORMATION CONTACT:** Keith R. Miles, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, MS 921–107, Pittsburgh, PA 15236, E-mail Address: miles@netl.doe.gov, Telephone Number: 412–386–5984.

**SUPPLEMENTARY INFORMATION:** The Department of Energy, National Energy Technology Laboratory's Fossil Energy—Oil and Gas Program plans to initiate a fundamental research and development (R&D) program (PRIME) in exploration and production technologies during FY–2002. This new initiative differs from the current Fossil Energy—Oil and Gas Program in that it stresses high-risk research that may require multiple years to develop from the concept phase. Such R&D activities warrant the longer-term investment of resources from which one to several breakthroughs may result in significant advancements in our understanding and subsequent development in technologies applicable to petroleum exploration and production.

The three areas of interest for this solicitation are:

**Area of Interest 1—Oil and Gas Recovery Technology**

The production research program has historically targeted oil reservoirs that contain around 200 billion barrels of oil that are potentially recoverable by conventional Enhanced Oil Recovery (EOR) methods. This program has been subdivided into the areas, (1) chemical methods, (2) gas flooding, (3) microbial methods, (4) heavy oil recovery, (5) novel methods, and (6) reservoir simulation. Each area addresses one or more specific portions of the resource base.

However, new technologies and concepts are being developed so there may be new areas that do not fit into the present EOR methods. This initiative is to focus on new technologies with longer-term R&D potential (recovery processes which are only at the concept stage), which may help recover additional oil but are currently outside the traditional methods.

**Area of Interest 2—Advanced Drilling, Completion, Stimulation, and Operations (ADCS)**

Currently producers and service providers in the oil and gas industry are being asked to reach deeper depths with a minimum of damage to the producing formation and at a cost well below traditional methods. What the industry needs is safe, lower cost drilling systems whose use can be considered value added and not simply a cost to the project. Technology that increases the ultimate production and creates access to the remote sites with a minimum disturbance and have the ability to drill and complete wells while protecting the environment is essential in the effort to develop remote areas.

DOE is looking for projects with the potential to create technological breakthroughs and surmount the current barriers to drilling and production. Projects should use an integrated system approach to the problems. The needs identified as high priority by a group of industry and research representatives in the ADCS area are:

• Miniaturization and materials development—The operational and mobilization costs associated with drilling and completion must be reduced significantly without sacrificing any performance. It will be necessary to develop beyond our current capabilities in the offshore and deep onshore to access the deeper targets economically and also to reduce the exploration costs. Research to improved performance and reliability must increase radically in order to reach some targets. DOE is accepting proposals for revolutionary development that would come into use after 2010. Such breakthroughs could lead to reductions in mobilization costs and increase the economics of a prospect. This may be achieved through breakthroughs in the following areas:

(1) Materials development that would allow the design of lighter, yet robust systems for drilling and operations.

(2) Miniaturization without loss of performance or reliability would effectively reduce space and weight requirements so critical to remote locations and ultradeep offshore development and exploration.

• Fluid/flow identification—It is critical to identify flow and fluids the horizontal leg of a well and in multi-lateral wells. The need for ''smart pipes'' and robust diverse sensors are suitable for such work. In particular, the identification must be in space. Parameters could include pressure, temperature, density, specific gravity, flow rate, flow volume, acoustics, orientation, motion or vibration, electrical or acoustical conductivity, radioactivity, and chemical composition.

• Separation technology—Downhole separation technology along with seafloor separation technology will be critical to the offshore industry and reduce the costs associated with produced water and waste issues. The technology has not advanced to fully address multi-lateral well designs or separation in the horizontal leg of a well. Proposals are sought for two topics in this area:

(1) Issues related to downhole separation—Radical design of downhole separation technology is critical to handle higher flow rates, fit into 8″ diameter and less wells, operate effectively at high water cuts, be able to handle solids, maintain better separation efficiency and high product quality.

(2) Subsea separation—The separation technology suitable to reduce cost associated with water lifting to the surface and address the associated disposal issues could create economic targets offshore that are currently marginal. Significant breakthroughs in this area are sought.

**Area of Interest 3—Advanced Diagnostic and Imaging Systems (ADIS) and Reservoir Characterization**

High risk, long term new research applications are solicited for finding new domestic oil/gas reserves. The research may be focused to develop innovative geologic system models and exploration concepts for analysis ofU.S. basins for new and overlooked fairways (field-to–basin scales).

The potential is focused on the development and application of new geoscientific and engineering concepts in high oil/gas potential basins on public lands and waters. Technology is needed to increase accuracy and resolution of seismic and other geological and geophysical methods. New methodology is solicited for interpretation and integration of multiple technology, and data sets into refined geologic and engineering models that guide discovery of new oil reserves, oil field development, and management for maximum economic oil recovery.

DOE currently has available $3.5 million for this Program Solicitation (PS) and the proposed budget for this program over 5 years is $23.5 million of DOE support. The total program of PRIME may be $30 million for a period of 7–10 years. It is anticipated that between 10–20 cost-shared awards, with a *total* project value estimated at $1.0 million to $1.5 million each (i.e., DOE share of project costs estimated at between $750K–$1,000K), will be made under this solicitation. The applicant must cost share a minimum of 20% of the total project cost. Projects must be structured with two (2) phases (i.e., Budget Periods) which include: idea and/or concept development (Budget Period 1) and initiation of proof-of-concept activities (Budget Period 2).

The research conducted in this program will provide support for foundation-building R&D in universities and the national laboratories and maintain the leadership of the United States in oil and gas technologies. It is envisioned that a teaming of expertise from academic, private research organizations, state and federal agencies in collaboration with industry may be needed to focus efforts on overcoming key scientific and engineering hurdles. Applications submitted by or on behalf of (1) another Federal agency; (2) a Federally Funded Research and Development Center sponsored by another Federal agency; or (3) a Department of Energy (DOE) Management Operating (M&O) contractor will not be eligible for award under this solicitation. However, an application that includes performance of a portion of the work by a DOE National Laboratory and/or M&O contractor will be evaluated and may be considered for award subject to the provisions to be set forth in Program Solicitation DE–PS26–02NT15375. (**Note:** The limit on participation by a National Laboratory and/or M&O contractor for an individual project under this solicitation cannot exceed 25% of the total project cost).

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_HelpDesk@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.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at http://www.netl.doe.gov/business. Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA, on May 3, 2002.

**Dale A. Siciliano,**

*Deputy Director, Acquisition and Assistance Division.*

[FR Doc. 02–11915 Filed 5–10–02; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

**AGENCY:** National Energy Technology Laboratory, Department of Energy (DOE).

**ACTION:** Notice of availability of a Financial Assistance Solicitation.

**SUMMARY:** Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–02NT41488 entitled Gas Storage Program. The Department of Energy's (DOE's) National Energy Technology Laboratory (NETL), through the Strategic Center for Natural Gas (SCNG), is conducting this solicitation to competitively seek cost-shared applications for research and technology development efforts to enhance operational flexibility and deliverability of the Nation's gas storage system, and provide a cost-effective, safe, and reliable supply of natural gas to meet demand in new and expanded market regions.

**DATES:** The solicitation will be available on the ''Industry Interactive Procurement System'' (IIPS) Web page located at *http://e-center.doe.gov* on or about May 8, 2002. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

**FOR FURTHER INFORMATION CONTACT:** Debra A. Duncan, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochrans Mill Road, P.O. Box 10940, Pittsburgh, PA 15236–0940, E-mail Address: *duncan@netl.doe.gov,* Telephone Number: 412–386–5700.

**SUPPLEMENTARY INFORMATION:** The Gas Storage Program supports the Strategic Center for Natural Gas' 2020 Vision of the U.S. public enjoying benefits (affordable supply, reliable delivery, and environmental protection) from an increase in gas use. Most natural gas consumed in the U.S. is not produced in the areas where it is most needed. To get gas to the customers, the Nation uses 1.5 million miles of natural gas pipelines capable of moving 111 billion cubic feet (Bcf) of gas daily. However, the amount of gas needed varies at time scales much shorter than can be accommodated by the production and pipeline systems. In general, demand varies seasonally, but the exact timing and magnitude of peak demand is largely determined by the weather, and is therefore unpredictable. As a result, gas is injected into more than 400 storage reservoirs, located near the points of demand, each year from April through October. Roughly 3.8 trillion cubic feet (Tcf) of storage gas is available to help meet peak demands. Pipelines and storage work together to comprise a natural gas distribution system that efficiently balances the need for steady year-round production with seasonal variation in use.

All projections of the Nation's near-term energy future call for increased use of natural gas. Gas consumption, now roughly 22 Tcf per year, could grow to more than 30 Tcf per year by 2015. As much as 50 percent of the new gas demand will come from the electric-generation sector, as new plants capitalize on the economic and environmental benefits of gas. This expansion in both the volume and nature of gas use will place significant new burdens on the Nation's pipeline and gas storage systems. These challenges require significant investment in R&D at a time when the gas industry is focusing on reducing

costs and improving profits in a competitive marketplace. The goal of the transmission and storage work at NETL is to develop the technologies needed to ensure both the reliability and flexibility of the Nation's critical gas distribution infrastructure as it adapts to changing supply and demand characteristics.

Research in gas storage conducted at NETL focuses on two main issues. First, NETL works cooperatively with storage operators to demonstrate technologies to preserve and improve the deliverability of existing conventional underground storage reservoirs. This work focuses on technologies to limit and remediate the progressive damage caused by the repeated injection and withdrawal of gas, as well as innovative management techniques that can maximize performance. Second, not all areas of high gas demand possess natural underground reservoirs that can support the local storage needs. Therefore, NETL is working to develop advanced storage concepts that utilize man-made structures such as underground mined caverns and other non-traditional means that can be located where needed

The objective of the National Energy Technology Laboratory's (NETL's) Natural Gas Storage rogram, and this solicitation, is to encourage and support research and technology development to advance natural gas storage, transmission, and distribution technologies to enhance operational flexibility and deliverability of the Nation's gas storage system, and provide a cost-effective, safe, and reliable supply of natural gas to meet demand in new and expanded market regions. To achieve program objectives, DOE/NETL, through the Strategic Center for Natural Gas, is requesting applications addressing, but not limited to, the following topics: (1) Thin-bedded salt cavern design technology—seeks proposals to investigate long-term geotechnical integrity of bedded salt cavern designs. The ability to develop stable gas storage caverns in thinly bedded salt could have implications for new storage capacity in the Eastern, Northeast, and Midwest United States. Proposed research could include geologic analysis, failure analysis and definition, and improved geotechnical design to mitigate possible failure; (2) Liquefied Natural Gas (LNG) Applications in Gas Storage—seeks proposals to investigate applications of LNG for conventional storage and distributed, or peaking power generation; (3) Hydrate Control—seeks proposals for control of natural gas hydrates formed in storage wells and gathering lines during rapid withdrawal operations; and (4) Deliverability enhancement—seeks proposals that will increase deliverability from aquifers and depleted oil and gas reservoirs. This could include ''smart'' storage systems that will optimize storage field operations.

Proposed approaches are anticipated to develop new or novel technologies, or suggest innovative applications of existing technologies. Efforts can encompass any combination of theory, laboratory validation of concepts, or field validation of concepts. The overall goal of this solicitation shall be to work toward a demonstration of the technology at a commercially scalable size.

DOE anticipates multiple cooperative agreement awards resulting from the solicitation and no fee or profit will be paid to a Recipient or Subrecipient under the awards. However, the Government reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this solicitation and will award that number of financial assistance instruments which serves the public purpose and is in the best interest of the Government. At current planning levels, and subject to the availability of funds, DOE expects to provide up to approximately $700,000 over the life of the projects to support work under this solicitation. This particular program is covered by section 3001 and 3002 of the Energy Policy Act (EPAct), 42 U.S.C. 13542 for financial assistance awards. EPAct 3002 requires a cost-share commitment of at least twenty (20) percent from non-Federal sources for research and development projects. Cost sharing must meet the requirements of 10 CFR 600.123 and 10 CFR 600.224. Allowable costs for cost sharing shall be in accordance with 10 CFR 600.127 and 10 CFR 600.222. The particular program is also covered by Section 2306 of EPAct, 42 U.S.C. 13525 for financial assistance awards. In order for a company to be eligible for an award under this solicitation, the Applicant must be a United States-owned company. If the Applicant is not a United States-owned company, it must be incorporated or organized in a foreign country that affords treatment to United States-owned companies that is comparable to treatment the United States affords foreign-owned companies. This eligibility requirement also applies to all companies participating in any joint venture, ''team'' arrangement, or as a major subcontractor. The solicitation will contain as part of the application package the applicable EPAct representation form(s). Applications which include performance of Federal agencies and agents (i.e. Management and Operations (M&O) contractors and/or National Laboratories) as a subcontractor will be acceptable under this solicitation if the proposed use of any such entities is specifically authorized by the executive Federal agency managing the M&O or National Laboratory, and the work is not otherwise available from the private sector. Such work, if approved, would be accomplished through a direct transfer of funding from the NETL to the M&O contractor and/or National Laboratory. Even though participation of an M&O and/or National Laboratory may be appropriate, their participation cannot exceed forty-nine (49) percent of the Applicant's total estimated project cost. The Government anticipates the maximum project period of twenty-four (24) months. This however does not preclude projects of a longer or shorter duration. Awards will have annual budget periods. Each annual budget period shall contain ''continuation decision points.'' 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_HelpDesk@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.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at http://www.netl.doe.gov/business. Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA, on May 6, 2002.

**Dale A. Siciliano,**

*Deputy Director, Acquisition and Assistance Division.*

[FR Doc. 02–11916 Filed 5–10–02; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP02–330–000]**

## ANR Pipeline Company; Notice of Tariff Filing

May 7, 2002.

Take notice that on May 1, 2002, ANR Pipeline Company (ANR), 9 E. Greenway Plaza, Houston, Texas 77046, tendered for filing Eighteenth Revised Sheet No. 19 for inclusion in ANR's FERC Gas Tariff, Second Revised Volume No. 1. ANR requests that this tariff sheet be made effective June 1, 2002. ANR states that it is proposing to modify its Tariff to provide for a general waiver of the charge for Transporter's Use on transportation services provided on ANR's off-system 12-mile lateral located between ANR's Link Meter Station and ANR's Corunna Interconnect Point in St. Clair, Michigan (the ''Link Lateral'').

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11858 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP02–335–000]**

## ANR Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

May 7, 2002.

Take notice that on May 1, 2002, ANR Pipeline Company (''ANR''), pursuant to Section 15.5 of the General Terms and Conditions FERC GAS Tariff, Second Revised Volume No. 1, tendered for filing the following revised tariff sheet to be effective June 1, 2002.

Thirty-Third Revised Sheet No. 17

This annual Cashout Price Surcharge filing reflects an increase in ANR's currently effective surcharge from $0.1508 per Dth to $0.4464 per Dth. This filing is ANR's eighth annual report of net cashout activity on its pipeline system and reflects the net financial results of shipper cashout activity during calendar year 2001 as well as the results of ANR's attempts to recover the prior period negative cashout balance.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11863 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. GT02–18–000]**

## CMS Trunkline Gas Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2002.

Take notice that on April 30, 2002, CMS Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to be effective June 1, 2002:

First Revised Sheet No. 5
First Revised Sheet No. 6
First Revised Sheet No. 7
First Revised Sheet No. 8
First Revised Sheet No. 9

Trunkline states that the purpose of this filing, made in accordance with the provisions of section 154.106 of the Commission's Regulations, is to revise the tariff maps to reflect changes in the pipeline facilities and the points at which service is provided. Trunkline requests confidential treatment of its maps. As such, only the Commission is receiving a hard copy of the revised tariff sheets that display the system maps in the original filing. The tariff sheets in the copies of the filing will identify the map and state that information has been removed for privileged treatment. Interested parties may request a copy of the confidential tariff sheets in accordance with section 388.108 of the Commission's regulations. Trunkline's shippers may contact Trunkline directly to request copies of the tariff map sheets.

Trunkline states that copies of the public portion of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11840 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP96–190–019]**

## Colorado Interstate Gas Company; Notice of Negotiated Rates

May 7, 2002.

Take notice that on May 2, 2002, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Original Sheet No. 11N.

On April 23, 2002 at Docket No. RP96–190–018, CIG submitted two tariff sheets summarizing negotiated rate transactions to become effective May 1, 2002. CIG is submitting Substitute Original Sheet No. 11N to revise the beginning date of one of the negotiated rate transactions to reflect the year 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11846 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP96–383–042]**

## Dominion Transmission, Inc.; Notice of Filing

May 7, 2002.

Take notice that on April 30, 2002, Dominion Transmission, Inc. (''DTI'') filed with the Federal Energy Regulatory Commission (Commission) the following tariff sheet for disclosure of a recently negotiated transaction with Key Oil Company:

First Revised Sheet No. 1414

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions. DTI also states that copies of its filing are available for public inspection during regular business hours in a convenient form and place, at DTI's offices at 445 West Main Street, Clarksburg, West Virginia 26301.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11848 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EL02–86–000]**

## Exelon Generation Company, LLC, Complainant, v. The Southwest Power Pool, Inc., Respondent; Notice of Complaint

May 7, 2002.

Take notice that on May 3, 2002, Exelon Generation Company, LLC (Exelon Generation), filed a complaint against The Southwest Power Pool, Inc. (SPP). Copies of the filing were served upon SPP.

Any person desiring to be heard or to protest this 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 must be filed on or before May 13, 2002. 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. Answers to the complaint shall also be due on or before May 13, 2002. 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, interventions and answers 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.,**

*Deputy Secretary.*

[FR Doc. 02–11837 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP02–232–000]**

## Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

May 7, 2002.

Take notice that on April 25, 2002, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to be effective June 1, 2002:

Seventh Revised Sheet No. 45
First Revised Sheet No. 55A
First Revised Sheet No. 57I

Great Lakes states that these tariff sheets are being filed to (1) add generally applicable tariff provisions setting forth the conditions under which contract demand reductions or termination provisions will be made available to all customers seeking firm capacity on a non-discriminatory basis, and (2) add tariff provisions to permit negotiation of a contractual right of first refusal between Great Lakes and its shippers in instances where a regulatory right is not available.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11855 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–305–009]**

## Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2002.

Take notice that on May 1, 2002, Mississippi River Transmission Corporation (MTR) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to be effective May 1, 2002.

Original Sheet No. 10E
Original Sheet No. 10F

MRT states that the purpose of this filing is to reflect the implementation of a new negotiated rate transaction.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11853 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–176–057]**

## Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2002.

Take notice that on April 30, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing with the Federal Energy Regulatory Commission (Commission) certain tariff sheets to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1 (Tariff), to be effective May 1, 2002.

Natural states that the purpose of this filing is to implement a new rate transaction entered into by Natural and Reliant Energy Aurora, LP under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff. Natural states that the negotiated rate agreement does not deviate in any material respect from the applicable form of service agreement in Natural's Tariff.

Natural requests waivers of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective May 1, 2002.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.,**

*Deputy Secretary.*

[FR Doc. 02–11850 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP02–333–000]**

## Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2002.

Take notice that Northern Natural Gas Company (Northern) on May 1, 2002 tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets to be effective June 1, 2002:

**Fifth Revised Volume No. 1**

Sixty-First Revised Sheet No. 50
Sixty-Second Revised Sheet No. 51
Twenty-Eighth Revised Sheet No. 52
Fifty-Eighth Revised Sheet No. 53
Eleventh Revised Sheet No. 56
20 Revised Sheet No. 59
Fourth Revised Sheet No. 59A
23 Revised Sheet No. 60
Fourth Revised Sheet No. 60A

**Original Volume No. 1**

168 Revised Sheet No. 1C

Northern is filing to adjust its rates effective June 1 to reflect the rate impact of the return and tax components associated with the System Levelized Account (SLA) balance as of March 31, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11861 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP02–334–000]**

## Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2002.

Take notice that Northern Natural Gas Company (Northern) on May 1, 2002 tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets to be effective June 1, 2002:

**Fifth Revised Volume No. 1**

Sixteenth Revised Sheet No. 54
Third Revised Sheet No. 54A
Fourteenth Revised Sheet No. 61
Fourteenth Revised Sheet No. 62
Fourteenth Revised Sheet No. 63
Fourteenth Revised Sheet No. 64
Third Revised Sheet No. 300A
Sixth Revised Sheet No. 301

The revised tariff sheets are being filed in accordance with Section 53 of Northern's Tariff. This filing establishes the fuel and unaccounted for percentages to be in effect June 1, 2002, based on actual data for the 12 month period ended March 31, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11862 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. PR02–15–000]**

## Ohio Valley Hub, LLC; Notice of Petition for Rate Approval

May 7, 2002.

Take notice that on April 17, 2002, Ohio Valley Hub, LLC (Ohio Valley) filed, pursuant to Section 284.224(c)(7) and Section 284.123(b)(1)(ii) of the Commission's Regulations, a petition for rate approval, requesting that the Commission approve rates on file with the Indiana Utility Regulatory Commission for firm and interruptible transportation and storage service.

Ohio Valley states that it concurrently filed for a blanket certificate pursuant to Section 284.224 of the Commission's regulations. The supporting documentation shows a state rate for firm transportation of $0.0813 per MMBtu demand charge and $0.1341 per MMBtu commodity charge. The storage rate is $0.0397 per MMBtu reservation charge and $0.0292 per MMBtu commodity charge.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before May 22, 2002. Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11845 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. GT02–22–000]**

## Petal Gas Storage, L.L.C.; Notice of Material Deviation Tariff Filing

May 7, 2002.

Take notice that on May 1, 2002, Petal Gas Storage, L.L.C. (Petal), tendered for filing its Material Deviation Tariff Filing.

Petal's filing requests that the Commission approve a Firm Transportation Service Agreement between Petal and Southern Company Services, Inc., which contains certain deviations from Petal's pro forma service agreement. Petal requests that the Commission approve the filing effective June 1, 2002.

Petal states that copies of the filing have been mailed to each of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 14, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11842 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. RP02–332–000]**

## Petal Gas Storage, L.L.C.; Notice of Filing

May 7, 2002.

Take notice that on May 1, 2002, Petal Gas Storage, L.L.C. (Petal), Nine Greenway Plaza, Houston, Texas 77046, tendered for filing an original and five (5) copies of the attached Tariff Sheets listed in Appendix A hereto. Petal requests that these sheets be made effective June 1, 2002.

Petal states that the tariff sheets are being filed to implement an AVS Rate Schedule. The AVS service proposes an interruptible advancing (lending) service under Rate Schedule AVS, whereby Petal would essentially loan gas to its customers requesting the service. Petal further states that the AVS service proposed here is identical to that proposed in its Order No. 637 compliance docket, RP00–491, as revised by its March 1, 2002, filing in Docket Nos. RP02–188, CP01–69 et al., and RP00–491.

Petal states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11860 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP02–331–000]**

## PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

May 7, 2002.

Take notice that on May 1, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing (to be part of its FERC Gas Tariff, First Revised Volume No. 1-A) Pro Forma Sheet No. 5 and Pro Forma Sheet No. 142, to comply with Commission orders issued August 6, 2001 and October 26, 2001 in Docket Nos. CP01–141–000 and -001, respectively. GTN indicates that these pro forma tariff sheets are intended to 1) establish an incremental fuel surcharge for shippers utilizing capacity currently being constructed as part of GTN's 2002 Pipeline Expansion Project (''02 Expansion'') and 2) establish a mechanism that will allow GTN to roll-down its proposed incremental fuel surcharge, consistent with the mechanisms described in the Commission's Statement of Policy on new pipeline construction. GTN indicates further that it is proposing to eliminate the applicability of its Competitive Equalization Surcharge to ''02 Expansion Shippers.

GTN requests that the Commission act upon the *pro forma* tariff sheets by July 1, 2002, in order to provide certainty to the market regarding the outcome of GTN's proposal prior to the start of the winter heating season. Following the outcome of the Commission's review of this filing, GTN states that it will file actual tariff sheets with a November 1,

2002 effective date, i.e., the anticipated in-service date for 97,500 horsepower of compression associated with GTN's ''02 Expansion.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11859 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–518–027]**

## PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

May 7, 2002.

Take notice that on May 1, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing Nineteenth Revised Sheet No. 7 as part of its FERC Gas Tariff, First Revised Volume No. 1–A. GTN states that this sheet is being filed to reflect the implementation of one negotiated rate agreement and the removal of two negotiated rate agreements that have expired. GTN requests that this tariff sheet become effective May 1, 2002.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11852 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–513–016]**

## Questar Pipeline Company; Notice of Negotiated Rates

May 7, 2002.

Take notice that on May 2, 2002, Questar Pipeline Company's (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Seventeenth Revised Sheet No. 7, to become effective May 1, 2002.

Questar states that the filing is being made to implement an amended negotiated-rate contract for BP Energy Company as authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, et al. The Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers. Questar submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 (Policy Statement) issued January 31, 1996.

Questar states that a copy of this filing has been served upon all parties to this proceeding, Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11851 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. RP02–318–000 and CP99–13–000]**

## Questar Southern Trails Pipeline Company; Notice of Tariff Filing

May 7, 2002.

Take notice that on May 1, 2002, Questar Southern Trails Pipeline Company (Southern Trails) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective June 1, 2002:

Original Sheet Nos. 1–130

On October 15, 1999, Southern Trails received a Preliminary Determination on Nonenvironmental issues in Docket Nos. CP99–163–000, et al. In the

October 15, 1999, order and in the order dated July 28, 2000, on rehearing, the Commission directed Southern Trails to file, not less than thirty days nor more than sixty days prior to the proposed effective date, revised rates and tariff sheets consistent with the modifications described in the orders.

In compliance with the Commission orders, Southern Trails is filing its Original Volume No. 1 FERC Gas Tariff. This filing is subdivided into three main Sections: (1) Tariff Changes ordered by the Commission, (2) modifications consistent with FERC Order Nos. 637 and 587-L through 587-N that update the original pro forma tariff and (3) miscellaneous tariff changes to update the General Terms & Conditions section of the tariff to be consistent with industry standards and procedures.

Southern Trails states that a copy of this filing has been served upon its customers, the Public Service Commissions of Utah, New Mexico, Arizona and California.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11856 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP96–200–079]**

## Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2002.

Take notice that on May 1, 2002, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective May 1, 2002:

Second Revised Sheet No. 635
Second Revised Sheet No. 636

REGT states that the purpose of this filing is to reflect the implementation of a new negotiated rate transaction and an amendment to an existing negotiated rate contract.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11847 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. GT02–21–000]**

## Sea Robin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2002.

Take notice that on April 30, 2002, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to be effective June 1, 2002:

Second Revised Sheet No. 6

Sea Robin states that the purpose of this filing, made in accordance with the provisions of Section 154.106 of the Commission's Regulations, is to revise the system map to reflect changes in the pipeline facilities and the points at which service is provided.

Sea Robin requests confidential treatment of its map. Sea Robin states that only the Commission is receiving a hard copy of the revised tariff sheet that displays the system map in the original filing. The tariff sheet in the copies of the filing will identify the map and state that information has been removed for privileged treatment. Interested parties may request a copy of the confidential tariff sheet in accordance with Section 388.108 of the Commission's Regulations. Sea Robin's shippers may contact Sea Robin directly to request a copy of the tariff map sheet.

Sea Robin states that copies of the public portion of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11841 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER02–1342–000 and ER96–2869–003]**

## State Line Energy, L.L.C., Dominion State Line, Inc.; Notice of Issuance of Order

May 7, 2002.

State Line Energy, L.L.C. (State Line Energy) and Dominion State Line, Inc. (Dominion State Line) (together, ''the Applicants) submitted for filing under section 205 of the Federal Power Act a joint application which included a notice of change in status, an amendment to its market-based rate tariff and code of conduct, and a market-based service agreement. The Applicants also requested waiver of various Commission regulations. In particular, the Applicants requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by the Applicants.

On May 2, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, 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 the Applicants 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, the Applicants are 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 the Applicants, 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 the Applicants' 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 June 3, 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.,**

*Deputy Secretary.*

[FR Doc. 02–11838 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP02–329–000]**

## Stingray Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2002.

Take notice that on May 2, 2002 Stingray Pipeline Company, L.L.C. (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 the following tariff sheet to become effective on June 1, 2002.

Fourth Revised Sheet No. 100

In light of a new offshore delivery point expected to go into service, Stingray is proposing changes to the Company Use Gas provision of its tariff as more fully discussed within the application.

Stingray states that a copy of this filing has been served upon its customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11857 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–255–045]**

## TransColorado Gas Transmission Company; Notice of Compliance Filing

May 7, 2002.

Take notice that on May 1, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Forty-Fifth Revised Sheet No. 21 and Eighteenth Revised Sheet No. 22A, to be effective May 1, 2002.

TransColordo states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

The tendered tariff sheets propose to revise TransColorado's Tariff to reflect four amended contracts with Enserco Energy, Inc., National Fuel Marketing Company, Dynegy Marketing & Trade and Sempra Energy Trading and a new contract with BP Energy Company.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and

regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11849 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–425–006]**

## Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2002.

Take notice that on May 2, 2002, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to become effective May 1, 2002:

First Revised Sheet No. 10

Williams states that the purpose of this filing is to file the negotiated rate agreement with Platte River Power Authority (PRPA).

Copies of the revised tariff sheets are being mailed to all parties on the service list, Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11854 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. GT02–17–000]**

## Williston Basin Interstate Pipeline Company; Notice of Filing

May 7, 2002.

Take notice that on April 30, 2002, Williston Basin Interstate Pipeline Company (Williston Basin), 1250 West Century Avenue, Bismarck, North Dakota 58503, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective April 30, 2002:

Second Revised Volume No. 1
Eleventh Revised Sheet No. 5
Ninth Revised Sheet No. 6
Ninth Revised Sheet No. 6A
Sixth Revised Sheet No. 7
Ninth Revised Sheet No. 8
Tenth Revised Sheet No. 9
Eighth Revised Sheet No. 10

Williston Basin states that the revised tariff sheets are being filed simply to update its System Maps with the most recent information available.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11839 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER99–1983–001, et al.]**

## Geysers Power Company, LLC, et al.; Electric Rate and Corporate Regulation Filings

May 6, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. Geysers Power Company, LLC

[Docket No. ER99–1983–001]

Take notice that on April 29, 2002, Geysers Power Company, LLC submitted for filing with the Federal Energy Regulatory Commission (Commission) its triennial market analysis update in compliance with the Commission order issued in this docket on April 28, 1999.

*Comment Date:* May 20, 2002.

### 2. Cordova Energy Company LLC

[Docket No. ER99–2156–001]

Take notice that on April 29, 2002, Cordova Energy Company LLC filed its updated market power analysis.

*Comment Date:* May 20, 2002.

### 3. PacifiCorp

[Docket No. ER01–1152–005]

Take notice that PacifiCorp on April 29, 2002, tendered for filing with the Federal Energy Regulatory Commission (Commission), in compliance with the Commission's Order dated April 10, 2002 under FERC Docket No. ER01–1152–000, copies of the Interconnection and Transmission Service Agreement (and amendments) between PacifiCorp and Western Area Power Administration. This filing is being made in compliance with the Order 614.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

*Comment Date:* May 20, 2002.

**4. Armstrong Energy Limited Partnership, LLLP**

[Docket No. ER02–1657–000]

Take notice that on April 29, 2002, Armstrong Energy Limited Partnership, LLLP (the Company) respectfully tendered for filing the following:

Service Agreement by Armstrong Energy Limited Partnership, LLLP to Dominion Energy Marketing, Inc., designated as Service Agreement No 1 under the Company's Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 1, effective on December 1, 2001. The Company requests an effective date of April 10, 2002, as requested by the customer.

Copies of the filing were served upon the Dominion Energy Marketing, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

*Comment Date:* May 20, 2002.

**5. Virginia Electric and Power Company**

[Docket No. ER02–1658–000]

Take notice that on April 29, 2002, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing the following:

1. Service Agreement for Long Term Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to The Wholesale Power Group of Virginia Electric and Power Company [OASIS #164117] designated as Service Agreement No. 363 under the Company's FERC Electric Tariff, Second Revised Volume No. 5;

2. Service Agreement for Long Term Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to The Wholesale Power Group of Virginia Electric and Power Company [OASIS #164119] designated as Service Agreement No. 364 under the Company's FERC Electric Tariff, Second Revised Volume No. 5;

3. Service Agreement for Long Term Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to The Wholesale Power Group of Virginia Electric and Power Company [OASIS 164368] designated as Service Agreement No. 365 under the Company's FERC Electric Tariff, Second Revised Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers effective June 7, 2000. Under the tendered Service Agreements, Dominion Virginia Power will provide long term firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff. Dominion Virginia Power requests an effective date of January 1, 2004, the date requested by the customer.

Copies of the filing were served upon The Wholesale Power Group of Virginia Electric and Power Company, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

*Comment Date:* May 20, 2002.

**6. Pinnacle West Capital Corporation**

[Docket No. ER02–1659–000]

Take notice that on April 29, 2002, Pinnacle West Capital Corporation (PWCC'') tendered for filing a Service Agreement with Plumas Sierra Rural Electric Cooperative under PWCC's FERC Rate Schedule No. 1. PWCC has requested waiver of the Commission's Notice Requirements for effective dates as stated in the service agreements.

A copy of this filing has been served on Plumas Sierra Rural Electric Cooperative.

**Comment Date: May 20, 2002.**

**7. Arizona Public Service Company**

[Docket No. ER02–1660–000]

Take notice that on April 29, 2002, Arizona Public Service Company (APS) tendered for filing a Service Agreement to provide control area services to Ak Chin Electric Utility Authority (AkChin) under APS'' Open Access Transmission Tariff.

A copy of this filing has been served on Ak Chin and the Arizona Corporation Commission.

*Comment Date:* May 20, 2002.

**8. Duke Energy Morro Bay LLC**

[Docket No. ER02–1661–000]

Take notice that on April 29, 2002, Duke Energy Morro Bay LLC (Duke Morro Bay) submitted for filing for informational purposes pursuant to Section 205 of the Federal Power Act and under its market-based rate tariff: (1) an amended service agreement pursuant to which it sells energy and ancillary services at wholesale to Duke Energy Trading and Marketing, L.L.C., and (2) a service agreement pursuant to which it sells energy at wholesale to Duke Energy Mulberry, LLC.

*Comment Date:* May 20, 2002.

**9. Duke Energy Moss Landing LLC**

[Docket No. ER02–1662–000]

Take notice that on April 29, 2002, Duke Energy Moss Landing LLC (Duke Moss Landing) submitted for filing for informational purposes pursuant to Section 205 of the Federal Power Act and under its market-based rate tariff: (1) an amended service agreement pursuant to which it sells energy and ancillary services at wholesale to Duke Energy Trading and Marketing, L.L.C., and (2) a service agreement pursuant to which it sells energy at wholesale to Duke Energy Mulberry, LLC.

*Comment Date:* May 20, 2002.

**10. Tampa Electric Company**

[Docket No. ER02–1663–000]

Take notice that on April 29, 2002, Tampa Electric Company (Tampa Electric) tendered for filing an unexecuted service agreement with Calpine Energy Services, LP (Calpine) for long-term firm point-to-point transmission service under Tampa Electric's open access transmission tariff.

Tampa Electric proposes an effective date of April 18, 2002, for the tendered service agreement, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Calpine and the Florida Public Service Commission.

*Comment Date:* May 20, 2002.

**11. Cleco Power LLC**

[Docket No. ER02–1664–000]

Take notice that on April 29, 2002 Cleco Power LLC (Cleco Power), tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, effective April 30, 2002, canceling Cleco Utility Group, Inc.''s Rate Schedule 17 and all supplements thereto. Cleco Power is successor-in-interest to Cleco Utility Group, Inc. Cleco Power simultaneously filed substantially the same rate schedule as Cleco Power's Rate Schedule 14. Cleco Power Rate Schedule 14 has been amended to reflect that the parties recently entered into a Service Agreement for the Sale of Power and Energy Between Cleco Power LLC and The City of Natchitoches, Louisiana.

*Comment Date:* May 20, 2002.

**12. Commonwealth Edison Company**

[Docket No. ER02–1665–000]

Take notice that on April 29, 2002, Commonwealth Edison Company (ComEd) submitted for filing twenty-three Service Agreements for Firm Point to Point Transmission Service, fourteen with corresponding Network Upgrade Agreements, between ComEd and Alliant Energy (Alliant), Ameren Energy Marketing (Ameren), Dynegy Power Marketing, Inc. (Dynegy), Wisconsin

Electric Power Marketing (Wisconsin Electric), and NRG Power Marketing, Inc. (NRG) under ComEd's FERC Electric Tariff, Second Revised Volume No. 5.

ComEd seeks an effective date of April 1, 2002 for each agreement and, accordingly, seeks waiver of the Commission's notice requirements. ComEd states that a copy of this filing has been served on Alliant, Ameren, Dynegy, Wisconsin Electric, NRG and the Illinois Commerce Commission.

*Comment Date:* May 20, 2002.

**13. PSI Energy, Inc.**

[Docket No. ER02–1666–000]

Take notice that on April 29, 2002, Cinergy Services, Inc. (Cinergy), as agent for PSI Energy, Inc., tendered for filing the Seventh Amendment to the Interconnection Agreement, dated May 1, 1992, between Indianapolis Power & Light Company and PSI Energy, Inc.

Cinergy states that it has served a copy of the filing upon the Indiana Utility Regulatory Commission and Indianapolis Power & Light Company.

Cinergy requests an effective date of May 1, 2002.

*Comment Date:* May 20, 2002.

**14. Duke Energy Hinds, LLC**

[Docket No. ER02–1667–000]

Take notice that on April 29, 2002, Duke Energy Hinds, LLC (Duke Hinds) submitted for filing for informational purposes pursuant to Section 205 of the Federal Power Act an executed service agreement under Duke Hinds' market-based rate tariff pursuant to which it sells power at wholesale to Duke Energy Trading and Marketing, L.L.C.

*Comment Date:* May 22, 2002.

**15. Duke Energy Lee, LLC**

[Docket No. ER02–1668–000]

Take notice that on April 29, 2002, Duke Energy Lee, LLC (Duke Lee) tendered for filing for informational purposes pursuant to Section 205 of the Federal Power Act an executed service agreement under Duke Lee's market-based rate tariff pursuant to which it sells power at wholesale to Duke Energy Trading and Marketing, L.L.C.

*Comment Date:* May 20, 2002.

**16. PJM Interconnection, L.L.C.**

[Docket No. ER02–1669–000]

Take notice that on April 29, 2002, PJM Interconnection, L.L.C. (PJM), tendered for filing the following executed agreement: an umbrella service agreement for network integration transmission service under state required retail access programs for Cook Inlet Power.

PJM requested a waiver of the Commission's notice regulations to permit effective date of April 1, 2002 for the agreement, the date that Cook Inlet Power became a member of PJM.

Copies of this filing were served upon Cook Inlet Power, as well as the state utility regulatory commissions within the PJM control area.

*Comment Date:* May 20, 2002.

**17. Commonwealth Electric Company**

[Docket No. ER02–1670–000]

Take notice that on April 30, 2002, Commonwealth Electric Company (Commonwealth) tendered for filing a firm point-to-point transmission service agreement between Commonwealth and Entergy Nuclear Generation Company (Entergy). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide firm point-to-point transmission service to Entergy under Commonwealth's open access transmission tariff accepted for filing in Docket No. ER01–2291–001. Commonwealth requests that the service agreement become effective on July 1, 2002.

*Comment Date:* May 21, 2002.

**18. Exelon Generation Company, LLC**

[Docket No. ER02–1671–000]

Take notice that on April 30, 2002, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a power sales service agreement between Exelon Generation and Electric Energy, Inc., under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2

*Comment Date:* May 21, 2002.

**Standard Paragraph**

E. Any person desiring to intervene or to protest this filing should file 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). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.,**

*Deputy Secretary.*

[FR Doc. 02–11808 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project Nos. 1932–004, 1933–010 & 1934–010—California]**

## Southern California Edison; Notice of Availability of Draft Environmental Assessment

May 7, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for licenses for the Lytle Creek, Santa Ana River 1 & 3, and the Mill Creek 2/3 Hydroelectric Projects, located on the Lytle Creek, Santa Ana River, and Mill Creek, respectively, in San Bernardino County, California, and has prepared a Draft Multiple Project Environmental Assessment (DEA) for the projects. The projects are located within the San Bernardino National Forest.

The DEA contains the staff's analysis of the potential environmental impacts of the projects and concludes that licensing the projects, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is on file with the Commission and is available for public inspection. The DEA 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).

Any comments should be filed within 45 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix Project No. 1932–004, P–1933–010, or P–1934–010 to all comments. Comments 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.For further information, contact Jon Cofrancesco at (202) 219–0079.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11843 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, and Terms and Conditions, Recommendations, and Prescriptions

May 7, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 3410–009.

c. *Date filed:* April 30, 2001.

d. *Applicant:* Woods Lake Hydro Company.

e. *Name of Project:* Woods lake Hydro Project.

f. *Location:* On Lime Creek, a tributary of Frying Pan River, in Eagle County, Colorado. The project occupies 2.73 acres of land within the White River National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825 (r).

h. *Applicant Contact:* Kenneth M. Knight, Woods Lake Hydro Company, P.O. Box 247, Parker, Colorado 80134, Tel. # (303) 964–1700.

i. *FERC Contact:* Gaylord Hoisington, (202) 219–2756, or *gaylord.hoisington@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. *Deadline for filing motions to intervene and protests, comments, and terms and conditions, recommendations, and prescriptions and request for cooperating agency status:* July 8, 2002.

All documents (original and eight copies) should be filed with: Magalie R Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. 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.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor 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.

Motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions and requests for cooperating agency status 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 (*http://www.ferc.gov*) under the ''e-Filing'' link. l. This application has been accepted for filing, and is now ready for environmental analysis.

We will consider the prefiling consultation process that has occurred as satisfying National Environmental Policy Act scoping and intend on issuing one environmental assessment (EA) rather than issuing a draft and final EA. Tentatively, we plan on issuing an EA by September 2002.

m. *The Woods Lake Project consists of:* (1) A 37.3-foot-long, 6-foot-high overflow-type gravity dam; (2) a reservoir having a surface area of 0.018 acre and a storage capacity of 0.09 acre-feet; (3) a gated and screened intake structure; (4) a gated 15-inch, 630-foot-long PVC pipeline penstock; (5) a powerhouse containing a generating unit having an installed capacity of 45-kilowatts; (6) a short 24-inch-diameter CMP tailrace pipe; (7) a 1.02-mile-long transmission line; and (8) a switch gear, power controls, breaker boxes, switches, meters, transformers, and other appurtenant facilities.

n. A copy of the application is on file with the Commission and is 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). A copy is also available for inspection and reproduction at the address in item h above.

o. 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, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified deadline date for the particular application.

The Commission directs, pursuant to Section 4.34 (b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20 1991) that all comments, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this

proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

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

*Deputy Secretary.*

[FR Doc. 02–11844 Filed 5–10–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Sunshine Act Meeting

MAY 8, 2002.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

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

**DATE AND TIME:** May 15, 2002, 10:00 A.M.

**PLACE:** Room 2C, 888 First Street, NE., Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda, * Note—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Magalie R. Salas, secretary, telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

**791ST—Meeting May 15, 2002, regular meeting, 10:00 A.M.**

**Administrative Agenda**

A–1.
Docket# AD02–1, 000, Agency Administrative Matters
A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

**Markets, Tariffs and Rates—Electric**

E–1.
Docket# ER02–1330, 000, Pacific Gas and Electric Company
E–2.
Docket# ER02–1401, 000, Allegheny Power
Other#s
ER02–1440, 000, PJM Interconnection, L.L.C.
ER02–1441, 000, PJM Interconnection, L.L.C.
E–3.
Docket# ER02–1387, 000, Entergy Louisiana, Inc.
E–4.
Docket# ER02–1400, 000, Illinois Power Company
E–5.
Docket# EL00–62, 010, NSTAR Services Company v. New England Power Pool
Other#s EL00–102, 000, Northeast Utilities Service Company and Select Energy, Inc. v. ISO New England Inc.
EL00–109, 000, Alternate Power Source, Inc. v. ISO New England Inc.
EL00–109, 001, Alternate Power Source, Inc. v. ISO New England Inc.
ER00–2052, 008, NSTAR Services Company v. New England Power Pool
E–6.
Docket# ER02–211, 000, Vermont Yankee Nuclear Power Corporation
Other#s EL02–53, 000, Vermont Yankee Nuclear Power Corporation and Entergy Nuclear Vermont Yankee, LLC
E–7.
Docket# EL00–95, 058, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
Other#s EL00–97, 003, Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc. and Southern Energy California, L.L.C. v. California Independent System Operator Corporation
EL00–98, 050, Investigation of Practices of the California Independent System Operator and the California Power Exchange
EL00–104 008 California Electricity Oversight Board v. All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–107, 009, Public Meeting in San Diego, California
EL01–1, 009, California Municipal Utilities Association v. All Jurisdictional Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
EL01–2, 003, CAlifornians for Renewable Energy, Inc. v. Independent Energy Products, Inc. and All Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, All Scheduling Coordinators Acting on Behalf of the Above Sellers, California Independent System Operator Corporation and California Power Exchange Corporation EL01–68 011 Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council
E–8. Docket# ER01–3000, 003, International Transmission Company
Other#s RT01–101, 003, International Transmission Company
RT01–101, 004, International Transmission Company
EC01–146, 003, International Transmission Company and DTE Energy Company
EC01–146, 004, International Transmission Company and DTE Energy Company
ER01–3000, 004, International Transmission Company
E–9.
Docket# ER00–2413, 002, American Electric Power Service Corporation
Other#s ER00–2413, 003, American Electric Power Service Corporation
ER00–2413 005 American Electric Power Service Corporation
E–10.
Omitted
E–11.
Omitted
E–12.
Docket# EL01–122, 001, PJM Interconnection, L.L.C.
E–13.
Docket# TX98–2, 000, Public Service Company of Colorado
E–14.
Docket# ER02–782, 001, Florida Power & Light Company
Other#s ER02–782, 002, Florida Power & Light Company
E–15.
Docket# EG02–99, 001, Garnet Energy LLC
E–16.
Docket# ER02–508, 001, Tampa Electric Company
Other#s ER02–551, 001, Tampa Electric Company
E–17.
Docket# ER01–3142, 006, Midwest Independent Transmission System Operator, Inc.
E–18.
Docket# ER02–851, 002, Southern Company Services, Inc.
Other#s ER02–851, 003, Southern Company Services, Inc.
E–19.
Docket# TX96–2, 003, City of College Station, Texas
E–20.

Docket# ER99–1770, 001, California Independent System Operator Corporation

E–21.

Docket# EL00–95, 031, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange

Other#s EL00–98, 030, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange

EL00–98, 033, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange

EL01–68, 000, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council

E–21. (Continued)

EL01–68, 001, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council

RT01–85, 000, California Independent System Operator Corporation

RT01–85, 001, California Independent System Operator Corporation

E–22.

Omitted

E–23.

Docket# EL00–95, 053, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange Corporation

Other#s EL00–95, 045, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange Corporation

EL00–97, 002, Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc. and Southern Energy California, L.L.C. v. California Independent System Operator Corporation

EL00–98, 042, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange

EL00–98, 047, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange

EL00–104, 007, California Electricity Oversight Board v. All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator Corporation and the California Power Exchange

EL00–107, 008, Public Meeting in San Diego, California

ER00–3461, 003, California Power Exchange Corporation

ER00–3673, 002, California Independent System Operator Corporation

E–23. (Continued)

EL01–1, 008, California Municipal Utilities Association v. All Jurisdictional Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange

EL01–2, 002, CAlifornians for Renewable Energy, Inc. v. Independent Energy Producers, Inc. and All Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, All Scheduling Coordinators Acting on Behalf of the Above Sellers, California Independent System Operator Corporation and California Power Exchange Corporation

EL01–10, 003, Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity at Wholesale Into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement

EL01–34, 002, Southern California Edison Company and Pacific Gas and Electric Company

EL01–68, 009, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council

RT01–85, 007, California Independent System Operator Corporation

ER01–607, 002, California Independent System Operator Corporation

ER01–1444, 003, Arizona Public Service Company

ER01–1445, 003, Automated Power Exchange, Inc.

ER01–1446, 005, Avista Energy, Inc.

ER01–1447, 003, California Power Exchange Corporation

ER01–1448, 005, Duke Energy Trading and Marketing, LLC

ER01–1449, 006, Dynegy Power Marketing, Inc.

ER01–1450, 003, Nevada Power Company

ER01–1451, 006, Portland General Electric Company

ER01–1452, 003, Public Service Company of Colorado

ER01–1453, 007, Reliant Energy Services, Inc.

ER01–1454, 003, Sempra Energy Trading Corporation

ER01–1455, 009, Mirant California, LLC, Mirant Delta LLC and Mirant Potrero, LLC

ER01–1456, 010, Williams Energy Services Corporation

ER01–1579, 003, California Independent System Operator Corporation

E–24. Docket# EL01–68, 010, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council

E–25.

Docket# EL00–95, 056, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator Corporation and the California Power xchange Corporation

Other#s EL00–98, 049, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange

E–26.

Docket# RM01–12, 000, Electricity Market Design and Structure

E–27.

Docket# RM02–9, 000, Electronic Filing of FERC Form No. 1 and Elimination of Certain Designated Schedules in FERC Form Nos. 1 and 1-F

E–28.

Docket# EL02–70, 000, The United Illuminating Company v. ISO New England Inc.

Other#s EL02–61, 000, PG&E National Energy Group, PG&E Generating, USGen New England Inc. and PG&E Energy Trading-Power, L.P. v. ISO New England Inc.

E–29.

Docket# EL00–35, 000, Platte-Clay Electric Cooperative, Inc.

E–30.

Docket# EL01–103, 000, USGen New England, Inc

E–31.

Docket# EL98–66, 000, East Texas Electric Cooperative, Inc. v. Central and South West Services, Inc., Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company

E–32.

Docket# EL01–106, 000, Old

Dominion Electric Cooperative v. PJM Interconnection, L.L.C.
Other#s ER02–1333, 000, PJM Interconnection, L.L.C.

E–33.
Docket# EL02–8, 000, Mirant Americas Energy Marketing, L.P., Mirant Bowline, LLC, Mirant Lovett, LLC and Mirant NY Gen, LLC v. New York Independent System Operator, Inc.

E–34.
Docket# EL02–58, 000, Public Service Company of New Mexico v. Arizona Public Service Company

E–35.
Omitted

E–36.
Docket# EL01–109, 000, Midwest Generation, LLC v. Commonwealth Edison Company

E–37.
Docket# EL02–71, 000, State of California, ex rel. Bill Lockyer, Attorney General of the State of California v. British Columbia Power Exchange Corporation, Coral Power, LLC, Dynegy Power Marketing, Inc., Enron Power Marketing, Inc., Mirant Americas Energy Marketing, LP, Reliant Energy Services, Inc., Williams Energy Marketing & Trading Company, All Other Public Utility Sellers of Energy and Ancillary Services to the California Energy Resources Scheduling Division of the California Department of Water Resources, and All Other Public Utility Sellers of Energy and Ancillary Services Into Markets Operated by the California Power Exchange and California Independent System Operator Corporation

E–38.
Docket# EL02–12, 000, Sunbury Generation, LLC v. PPL Electric Utilities Corporation

E–39.
Docket# EL01–50, 000, KeySpan-Ravenswood, Inc. v. New York Independent System Operator, Inc.

E–40.
Docket# ER00–2413, 006, American Electric Power Service Corporation
Other#s ER00–3435, 003, Carolina Power & Light Company
ER01–247 004 Virginia Electric and Power Company

E–41.
Docket# ER00–3668, 001, Commonwealth Edison Company
Other#s ER00–3668, 000, Commonwealth Edison Company
ER00–3668 002 Commonwealth Edison Company

E–42.
Docket# ER01–3122, 000, Appalachian Power Company

**Miscellaneous Agenda**

M–1.
Reserved

**Markets, Tariffs and Rates—Gas**

G–1.
Docket# RP00–403, 000, Northern Border Pipeline Company
Other#s RP00–403, 001, Northern Border Pipeline Company
RP01–85, 000, Northern Border Pipeline Company
RP01–388, 000, Northern Border Pipeline Company

G–2.
Docket# RP00–320, 000, Chandeleur Pipe Line Company
Other#s RP01–111, 000, Chandeleur Pipe Line Company

G–3.
Docket# RP00–462, 000, Equitrans, L.P.
Other#s RP01–37, 001, Equitrans, L.P.
RP01–37 002 Equitrans, L.P.

G–4.
Docket# RP00–392, 000, Nautilus Pipeline Company, L.L.C.
Other#s RP00–576, 000, Nautilus Pipeline Company, L.L.C.

G–5.
Docket# GT01–25, 003, ANR Pipeline Company
Other#s RP99–301, 038, ANR Pipeline Company

G–6.
Omitted

G–7.
Docket# RP01–623, 003, Mississippi River Transmission Corporation
Other#s RP01–622, 002, Mississippi River Transmission Corporation

G–8.
Docket# RP02–129, 001, Southern LNG Inc. ,
Other#s RP02–129, 002, Southern LNG Inc.

G–9.
Omitted

G–10.
Docket# RM98–10, 010, Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services

G–11.
Docket# RP02–206, 000, Tenaska Marketing Ventures v. Northern Border Pipeline Company

G–12.
Docket# OR02–4, 000, Chevron Products Company v. SFPP, L.P.

G–13.
Docket# IS01–444, 004, Conoco Pipe Line Company
Other#s IS01–445, 004, Conoco Pipe Line Company

G–14.
Docket# RP00–318, 000, Enbridge Pipelines (KPC)(formerly, Kansas Pipeline Company)
Other#s RP01–6, 001, Enbridge Pipelines (KPC)(formerly, Kansas Pipeline Company)

G–15.
Docket# OR01–8, 000, ARCO, a subsidiary of BP America, Inc. v. Calnev Pipe Line, L.L.C.
Other#s OR01–8, 001, ARCO, a subsidiary of BP America, Inc. v. Calnev Pipe Line, L.L.C.
OR02–2, 000, Tosco Corporation v. Calnev Pipe Line, L.L.C.
OR02–3, 000, Ultramar Inc. v. Calnev Pipe Line, L.L.C.

G–16.
Docket# RP00–545, 000, WestGas InterState, Inc.
Other#s RP01–55, 001, WestGas InterState, Inc.
RP01–55, 002, WestGas InterState, Inc.

G–17.
Docket# PR02–10, 000, Enogex, Inc.

G–18.
Docket# RP00–387, 000, Florida Gas Transmission Company
Other#s RP00–583, 000, Florida Gas Transmission Company
RP00–583, 001, Florida Gas Transmission Company

G–19.
Docket# OR02–7, 001, Kinder Morgan Energy Partners, L.P.

**Energy Projects—Hydro**

H–1.
Docket# P–2436, 158, Consumers Energy Company
Other#s P–2447, 148, Consumers Energy Company
P–2448, 152, Consumers Energy Company
P–2449, 132, Consumers Energy Company
P–2450, 128, Consumers Energy Company
P–2451, 132, Consumers Energy Company
P–2452, 139, Consumers Energy Company
P–2453, 158, Consumers Energy Company
P–2468, 134, Consumers Energy Company
P–2580, 177, Consumers Energy Company
P–2599, 145, Consumers Energy Company

H–2.
Docket# P–2113, 146, Wisconsin Valley Improvement Company

H–3.
Omitted

H–4. ,
Omitted

H–5.

Docket# P–137, 036, Pacific Gas and Electric Company
Other#s P–619, 098, Pacific Gas and Electric Company and City of Santa Clara, California

H–6.
Docket# P–2899, 105, Idaho Power Company

**Energy Projects—Ccertificates**

C–1.
Docket# CP01–439, 000, Columbia Gas Transmission Corporation

C–2.
Docket# CP01–45, 002, Colorado Interstate Pipeline Company

C–3.
Docket# CP00–36, 004, Guardian Pipeline, L.L.C.
Other#s CP02–160, 000, ANR Pipeline Company

C–4.
Docket# CP01–311, 000, Kinder Morgan Interstate Gas Transmission LLC

C–5.
Docket# CP02–133, 000, Aquila Storage and Transportation, LP

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11984 Filed 5–9–02; 11:21 pm]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Sunshine Act Meeting

May 8, 2002.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

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

**DATE AND TIME:** May 15, 2002, (30 Minutes Following Regular Commission Meeting).

**PLACE:** Room 2C, 888 First Street, NE., Washington, DC 20426.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Docket No. EL02–75–000, Duke Energy Trading and Marketing, L.L.C. v. Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc. and Entergy Services, Inc.

**CONTACT PERSON FOR MORE INFORMATION:** Magalie R. Salas, Secretary, Telephone (202) 208–0400.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–11985 Filed 5–9–02; 11:21 am]

**BILLING CODE 6717–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 02–957]**

### Annual Adjustment of Revenue Threshold

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the 2001 revenue threshold used for classifying carriers for various accounting and reporting purposes is increased to $119 million. The Telecommunications Act of 1996 mandates that the Commission shall adjust the revenue threshold annually to reflect the effect of inflation.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Debbie Weber, Pricing Policy Division, Wireline Competition Bureau at (202) 418–0812.

**SUPPLEMENTARY INFORMATION:** This gives notice that the annual revenue threshold used for classifying carriers for various accounting and reporting purposes is increased to $119 million. Section 402(c) of the Telecommunications Act of 1996 mandates that we adjust this revenue threshold annually to reflect the effects of inflation since October 19, 1992, at which time the threshold was $100 million. In accordance with the Act, we adjust the threshold based on the ratio of the gross domestic product chain-type price index (GDP–CPI) in the revenue year and the GDP–CPI for October 19,1992. The revenue threshold for 2001 was determined as follows:

(1) October 19, 1992 GDP–CPI: 91.62
(2) 2001 GDP–CPI: 109.37
(3) Inflation Factor (line 2 ÷ line 1): 1.1937
(4) Original Revenue Threshold: $100 million
(5) 2001 Revenue Threshold (line 3 * line 4): $119 million

Federal Communications Commission.

**Tamara L. Preiss,**

*Chief, Pricing Policy Division.*

[FR Doc. 02–11834 Filed 5–10–02; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Technological Advisory Council

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the fifth meeting of the Technological Advisory Council (''Council'') under its new charter.

**DATES:** Wednesday, June 12, 2002 at 10 a.m.

**ADDRESSES:** Federal Communications Commission, 445 12th St. SW., Room TW–C305, Washington, DC 20554.

**SUPPLEMENTARY INFORMATION:** Continuously accelerating technological changes in telecommunications design, manufacturing, and deployment require that the Commission be promptly informed of those changes to fulfill its statutory mandate effectively. The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from a variety of interests such as industry, academia, government, citizens groups, etc., can provide advice to the FCC on innovation in the communications industry. The purpose of, and agenda for, the fifth meeting under the Council's new charter will be to review the progress that has been made and organize the Council's efforts to fulfill its responsibilities under its new charter. The Council will also consider such questions as the Commission may put before it. Members of the public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Jeffery Goldthorp, the Federal Communications Commission's Designated Federal Officer for the Technological Advisory Council, before the meeting. Mr. Goldthorp's e-mail address is *jgoldtho@fcc.gov.* His United States mail delivery address is Jeffery Goldthorp, Chief, Network Technology Division, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02–11833 Filed 5–10–02; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 6, 2002.

**A. Federal Reserve Bank of Atlanta** (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

*1. Gwinnett Commercial Group, Inc.*, Lawrenceville, Georgia; to merge with Embry Bankshares, Inc., Lawrenceville, Georgia, and thereby indirectly acquire voting shares of Emby Bank, Lawrenceville, Georgia.

**B. Federal Reserve Bank of Kansas City** (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. Grace Investment Company, Inc.*, Alva, Oklahoma; to acquire 100 percent of the voting share of Alva State Bank & Trust Company, Alva, Oklahoma.

Board of Governors of the Federal Reserve System, May 7, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 02–11799 Filed 5–10–02; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

## SECURITIES AND EXCHANGE COMMISSION

**[Docket No. R–1122; Release No. 34–45879; File No. S7–15–02]**

**RIN 3235–AI48**

### Interagency White Paper on Structural Change in the Settlement of Government Securities: Issues and Options

**AGENCIES:** Board of Governors of the Federal Reserve System and Securities and Exchange Commission.

**ACTION:** Concept release; request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (''Board'') and the Securities and Exchange Commission (''Commission'') (collectively, the ''agencies'') are publishing for comment an interagency White Paper titled: *Structural Change in the Settlement of Government Securities: Issues and Options* (''White Paper''). The White Paper is designed to facilitate the discussion of possible structural changes in the settlement of government securities transactions. The White Paper is not intended to suggest that any of the approaches represent an improvement over current arrangements or that structural change is necessary. The goal of the White Paper is to provide a framework for discussion by identifying issues and questions that need to be further explored.

**DATES:** Comments should be received on or before August 12, 2002.

**ADDRESSES:** Comments should be sent to both agencies at the addresses listed below.

*Board:* Comments should refer to Docket No. R–1122 and should be submitted in triplicate to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or mailed electronically to *regs.comments@federalreserve.gov.* Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

*SEC:* All comments concerning the White Paper should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Comments can be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–15–02; this file number should be included on the subject line if e-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

**FOR FURTHER INFORMATION CONTACT:** *Board:* Patrick Parkinson, Associate Director, (202) 452–3526, and Patricia White, Assistant Director, (202) 452–3620, Division of Research and Statistics; and Jeff Stehm, Assistant Director, (202) 452–2217, Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

*SEC:* Robert L.D. Colby, Deputy Director, at (202) 942–0094; Larry Bergmann, Senior Associate Director, at (202) 942–0770; Jerry Carpenter, Assistant Director, at (202) 942–4187; Jeffrey Mooney, Senior Special Counsel, at (202) 942–4174, and Jennifer Lucier, Attorney, at (202) 942–0173, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

**SUPPLEMENTARY INFORMATION:**

After the September 11, 2001, terrorist attacks, discussions were held with market participants to learn their perspectives on vulnerabilities in settlements of government securities. Three options for addressing vulnerabilities were explored: (1) The clearing banks and key market participants implementing more robust contingency arrangements; (2) each

[1] The Commission does not edit personal, identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

primary dealer establishing a backup clearing arrangement at a bank other than its existing clearing bank; and (3) implementing structural change such as by establishing a utility to conduct settlement. The discussions revealed consensus on two points—contingency planning should be enhanced but market participants felt that a backup clearing account would be of little value. Market participants were interested in exploring structural changes in the provision of settlement services for government securities, including the concept of creating a utility, but the discussion was unfocused because of the absence of specific proposals.

The purpose of this White Paper is to facilitate discussion of issues relating to the settlement of government securities transactions by describing more concretely ways in which a utility might be organized. The staffs of the agencies believe that further discussion of a utility is warranted because enhanced contingency planning alone does not eliminate the vulnerabilities that have been identified in the settlement process for the government securities market. The White Paper identifies possible structural approaches for a utility and possible evaluation criteria for assessing the approaches. The White Paper also offers a preliminary assessment of the various approaches. The agencies request the views of market participants on the analysis in the White Paper and the next steps to be taken in evaluating structural change further.

The White Paper in its entirety is set forth below.

**Interagency White Paper [2] Structural Change in the Settlement of Government Securities: Issues and Options**

**Introduction**

Payment and securities settlement systems have been marked by increasing consolidation of the institutions providing those services. During the 1980s and early 1990s, for example, mergers and exits reduced the number of banks providing settlement services for government securities trades, and today only two banks—JPMorgan Chase (Chase) and The Bank of New York (BONY)—provide the full range of services required by major market participants. Though these changes in the settlement of government securities are only one aspect of broader developments in financial markets, they are of particular interest to makers of public policy because of the key role that government securities play in the monetary policy process and as collateral in a wide array of financial market transactions.[3]

The business of settling trades in government securities involves the provision of a range of services: the transfer of government securities against funds (settlement), the provision of intraday credit to facilitate these settlements, position management services for primary dealers (including the matching of settlement instructions with incoming securities, automated options for handling mismatches, and the real-time reporting of transactions), and overnight and term financing through triparty repurchase agreements (repos). Settling trades, providing intraday credit, and providing tools (software) for position management are sometimes referred to as ''core clearing.'' [4] The financing provided through triparty repos also is critical to the functioning of the government securities market. Triparty services for government securities currently are provided by the same banks that provide core clearing, but different entities may be able to offer the two types of services, as is the case for other types of securities.[5]

All the primary dealers depend critically on either Chase or BONY for core clearing services and triparty repo arrangements, which are integral to the dealers' financing, and institutional investors rely on these clearing banks to place large volumes of funds in the highly secure and liquid triparty repos. The Federal Reserve also is dependent upon the clearing banks' records for open market transactions conducted through triparty arrangements, and the U.S. Treasury relies on the clearing banks for the settlement of a major portion of its securities at issuance.

This concentration in the provision of clearing services gives rise to operational, financial, and structural vulnerabilities.

(1) Operational problems at either of the two clearing banks can significantly impede the settlement of dealers' trades and the reconciliation of their positions. Market participants settling through a clearing bank with operational problems could not easily move to another service provider because of differences in the technology used by the clearing banks. Even if a switch in banks were technologically feasible, firms would be hampered because they would not know their securities and funds positions or have access to them at the clearing bank with operational problems.

(2) Financial vulnerabilities arise from the potential for a clearing bank's financial condition to become impaired, perhaps because of losses from activities unrelated to the clearing business. Involuntary exit because of financial problems could force regulators to transfer the clearing operations to a bridge bank.[6] Moreover, market participants might be uncomfortable with the uncertainty associated with a bridge bank, particularly because the ability to fashion a permanent solution (through, for example, the sale of the business) may be limited.

(3) The current concentration in clearing has resulted in part from voluntary decisions by banks to exit the clearing business. A business decision to exit by either clearing bank would concentrate risk and market power in a single, full-purpose, commercial bank. This concentration of risk would likely be unacceptable to market participants and public policy makers and might be unacceptable to the remaining clearing bank.

As part of the stocktaking after September 11, staff from the Federal Reserve, the Commission, and the Treasury held discussions with market participants to learn their perspective on the vulnerabilities of the government

[2] Prepared by staff of the Federal Reserve Board, the Federal Reserve Bank of New York, and the Securities and Exchange Commission. Staff at the U.S. Treasury Department were consulted and provided comments.

The agencies whose staff contributed to the drafting of this paper have not concluded that structural change is necessary.

[3] The Group of Ten, ''Report on Consolidation in the Financial Sector,'' January 2001, provides a detailed look at the ongoing consolidation of financial institutions and the potential effects on the contours of the financial system.

[4] Some view the use of the term ''clearing'' for these activities as a misnomer. The Government Securities Clearing Corporation (GSCC) serves as the clearing utility and central counterparty for trade comparison and netting in the U.S. government securities market. Trade comparison and trade netting services are also traditionally referred to as ''clearing.'' Because of the prevalence of the use of the term ''clearing'' for settling trades in government securities, however, its use is continued here.

[5] Triparty programs cover various securities for which core clearing is provided by the Depository Trust Company (DTC) or Euroclear Bank.

[6] The use of a bridge bank might be consistent with a least-cost resolution; but if it were not, authorities would need to consider a systemic-risk exception to least-cost resolution, with the attendant increased costs in terms of moral hazard and diminished market discipline on large complex banks. The Federal Deposit Insurance Corporation generally must resolve failed institutions using the least costly method that meets its obligations to insured depositors. It can employ a method that is not least cost only if the Federal Reserve Board and the board of the FDIC recommend that step and if the Secretary of the Treasury (in consultation with the President) makes an explicit determination that a least-cost resolution would have adverse effects on economic conditions or financial stability and that the more costly method for resolution would avoid or mitigate those adverse effects. This is known as the ''systemic-risk exception.''

securities market. The discussants explored three options for addressing vulnerabilities: improving the operational resiliency of clearing banks, establishing backup securities accounts with the second clearing bank, and instituting structural change, for example, by creating an industry utility to conduct settlement.

These discussions indicated consensus on two points. First, clearing banks as well as other market participants needed to improve their contingency backup arrangements.[7] Second, backup securities accounts would be difficult to arrange and likely would be of little value. The technology used by the two clearing banks is sufficiently different to make it difficult and costly to establish and maintain such accounts. More important, quickly moving activity to another account would likely be difficult because of the need to determine positions at the bank with problems, transfer these positions to the backup account, and alter standing settlement instructions with counterparties to direct new transactions to the backup account.

Market participants were interested in exploring structural change, including the concept of an industry utility. Discussions of such a utility were hampered, however, by different conceptions of how it might be organized and lack of systematic consideration of the concept on the part of most market participants.

This paper facilitates exploration of structural change in settlements of government securities by describing more concretely some approaches to organizing an industry utility. The agencies believe further discussion of structural change is warranted because enhanced contingency backup arrangements alone do not eliminate the financial and structural vulnerabilities that the market faces. Indeed, the cost of improved contingency arrangements could exacerbate structural vulnerability by reducing the profitability of core clearing. This paper also identifies possible criteria for assessing the approaches and, to encourage further discussion, offers a preliminary evaluation of the various approaches using the assessment criteria.

The agencies whose staff have contributed to the drafting of this paper have not concluded that any of the approaches described below represents an improvement over current arrangements. Nor is this paper intended to resolve that issue. Rather, the agencies believe that a broad industry discussion of these issues is timely and that such a discussion would benefit from a document that furnishes it with a framework. This paper, therefore, provides that framework and identifies issues and questions that need to be explored further.

[7] A complementary interagency group is working with private-sector firms and utilities to improve the resiliency of financial market participants' backup arrangements. Goals of the group include developing guidance on business continuity issues, organizing industry testing, and addressing telecommunications issues, particularly switching and routing diversity.

## Approaches

One of the difficulties in discussing the establishment of a utility is the wide variety of forms that such an entity could take. The structure of the utility determines how risks will be shared and costs will be borne. An important dimension along which utilities often differ is their ownership and governance. A utility can be organized as a private-sector entity, perhaps owned and governed by market participants but subject to oversight by a public-sector body. Alternatively, clearing and settlement functions might be performed by a governmental entity. Other important characteristics of a utility include how credit is supplied in the clearing process (by individual banks, by the utility itself, by the central bank) and how the operational infrastructure is supplied (by competing service providers, by a single private utility, by the central bank). To focus discussion on the specific characteristics that meet market needs and address market vulnerabilities, this analysis is limited to only three of the many ways in which a utility might be structured.

### *Old Euroclear Model*

A utility can be structured as an industry-owned depository and settlement entity that contracts with a commercial bank for the provision of most services.[8] This model for a utility is similar to the original Euroclear model in which, until 2001, an industry-owned company contracted with Morgan Guaranty Trust Company for operational and credit services. Shareholders of a utility organized along these lines would largely be securities and banking industry participants. The governing body typically would be elected by shareholders, and it would establish membership criteria, prices, operating budgets, and investment priorities. The utility would contract with a bank (or banks or other service providers) for the operation of the settlement and depository services. Settlements would take place on the books of this bank, which would furnish securities and cash accounts to dealers. It would also furnish intraday financing, subject to risk controls it would establish. Overnight financing, including triparty repo services, would be provided either by the bank supplying the operational support or perhaps by other banks.

[8] Contracting with multiple banks for these services may be possible.

### *A Private Limited-Purpose Bank*

A private limited-purpose bank (like the Depository Trust Company [DTC] or the new Euroclear Bank) is an alternative type of industry-owned depository and settlement mechanism.[9] Key features distinguishing this model from the old Euroclear model are the means of providing depository and settlement services and the sources of liquidity support. Rather than contracting with a commercial bank, the utility itself would furnish the operational support. Settlements of government securities currently require aggregate extensions of hundreds of billions of dollars of intraday credit to dealers, and a private limited-purpose bank would need to arrange a backup liquidity facility to ensure final settlement in the event one of its participants failed to cover an overdraft. Based on the experience of other utilities in arranging facilities a fraction of that size, a private limited-purpose bank might find arranging sufficient backup liquidity support difficult, other than possibly from the Federal Reserve. Overnight funding, including triparty repo services, could be provided by the limited-purpose bank or perhaps by other commercial banks.

[9] This option could be implemented by expanding an existing depository such as DTC or by creating an organization de novo.

## Enhancement of Federal Reserve Services

A third alternative is a public utility in which the Federal Reserve provides depository and settlement services. The Federal Reserve and the Commission generally prefer private-sector solutions to policy problems unless a market failure suggests a clear need for government intervention. In evaluating potential structural changes, however, it is important to discuss the widest possible set of ways to address the vulnerabilities for the government securities market, which includes enhancing Federal Reserve services.

In a simple version of this model, the Federal Reserve would need to provide nonbank securities dealers, as well as the GSCC (and possibly interdealer brokers), direct access to securities

accounts, funds accounts, and secured credit. As noted earlier, dealers routinely use substantial intraday credit, which would need to be supplied by the Federal Reserve. A dealer also might find itself unable to fund its holdings of government securities in a financial crisis, and in that event, the Federal Reserve would need to provide liquidity support in the form of overnight credit. For this model to be effective, the Federal Reserve would have to furnish operational support by developing products that replicate at least some of the position management and information services currently provided to the dealers by the clearing banks. Dealers would continue to need the overnight funding supplied by triparty repo services. These services might be provided by commercial banks. Alternatively, the Federal Reserve could develop the product. In this case, the Federal Reserve would need to consider how triparty services might be offered without also extending accounts to nonbank institutional investors, perhaps by using these investors' accounts at their custodian banks.

Variants on this simple model of enhanced Federal Reserve services also might be explored. For example, the Federal Reserve could provide direct operational interfaces with the dealers, but the dealers' transactions could settle through accounts held at depository institutions. In this way, depository institutions would intermediate the intraday credit used in the settlement process.

**Evaluation Criteria**

*Operational, Financial, and Structural Vulnerabilities*

Any proposal to restructure government securities settlements must address the operational, financial, and structural vulnerabilities that are inherent in the current arrangements. Arguably, no utility could be designed to eliminate all these vulnerabilities. Rather, the relevant criteria for evaluating options are the extent to which the utility can reduce existing vulnerabilities. Proposals thus should be evaluated on their ability to improve the operational resiliency of government securities clearing, to better insulate the clearing process from the risks of financial problems at a key service provider, and to reduce the vulnerability of the clearing process to voluntary exit by firms that provide critical services. In the addressing of these vulnerabilities, however, it is equally important that new ones not be introduced, and evaluations of structural change should take this concern into account.

*Efficiency and Innovation*

Other criteria that are critical for evaluating any restructuring proposal are the proposal's implications for the efficiency and innovativeness of the settlement process and related financing transactions. Existing arrangements in which the clearing banks compete in the provision of services to dealers create a mechanism both for holding down costs and for fostering innovation. The development of triparty repo services illustrates how clearing banks, in responding innovatively to market demands, have reduced dealers' financing costs and benefited investors. Proposals for structural change, therefore, should be evaluated on their ability to replicate the strengths of the existing system, encourage ongoing innovation, and deliver services in a cost-effective manner.

Fully evaluating proposals may be difficult because the evaluations will depend on the governance structures adopted, which will determine pricing and investment decisions. In general, various proposals' governance structures (and the transparency of those structures) will have implications for a range of important issues, from the robustness of the risk-management system to the fairness (particularly with respect to access) of the system. Furthermore, assumptions about the initial investment required and the potential for savings on operating costs over time are necessary for making judgments about the efficiency of proposals.

*Implications for Federal Reserve Policies*

Proposals to restructure the settlement process will have implications for Federal Reserve services and policies. The implementation of some proposals would require the Federal Reserve to broaden dramatically the scope of services that it provides market participants and, most important, change policies with respect to the types of firms that are granted access to accounts and to credit. Consideration of these proposals should entail an assessment of the Federal Reserve's legal and operational ability to deliver the required services. Proposals also should be evaluated to determine whether broader access and the provision of credit to nondepositories poses significant risk to the Federal Reserve or entails significant moral hazard. Other proposals raise the possibility that the Federal Reserve would greatly reduce its role in settling secondary market transactions for government securities, and the implications of that possible outcome also should be assessed.

**Evaluations of Approaches**

*Old Euroclear Model*

This model's ability to address the vulnerabilities in the current system is mixed; though operational vulnerabilities could be addressed, financial vulnerabilities would not, and the effects on structural vulnerabilities would be unclear. Operationally, the utility would contract with one or more entities to provide support for depository and settlement activities, and its resiliency would depend upon the standards it set for firms providing the services. There is no reason to believe that the operational resiliency of this model would not be on par with that of the current system, and it might be possible to hold the banks providing services to higher standards because the costs would be more transparent and, therefore, dealers might be more willing to bear them.

The ability of this model to address financial and structural vulnerabilities is much more limited, however. The utility would be exposed to the risk that a bank providing operational and credit services could involuntarily exit the business because of financial difficulties unrelated to clearing activities. This risk would be diversified if more than one firm provided these services. However, given the economies of scale and scope in clearing, the willingness of multiple banks to provide the critical services and, therefore, the potential for diversifying the risks may be limited. The extent to which the structural vulnerabilities are addressed depends on the ability of the utility to negotiate long-term contracts with suppliers of critical services at terms that the supplier will find sufficiently attractive to remain in the business.

Because of the critical role of triparty activity in the financing of dealers, the market would be vulnerable to operational, financial, or structural problems if triparty services continued to be concentrated among only a few providers. Dealers might be able to manage these risks by requiring standardization of software that would enable them to move their accounts more easily in the event of operational problems or exit, but the challenges of reconciling positions in such events would remain.

The ability of this model to deliver innovative services cost effectively will depend critically on the governance structure of the utility and the standards

it sets for banks supplying services. The utility may be able to foster competition similar to that of the current system by contracting with multiple banks for services. Product innovation would be dependent upon the utility's policies as well. The management and board of the utility clearly would have to be mindful of these issues if this model of utility were to retain these features of the current system.

This model would not require any changes in Federal Reserve policies. The model continues to rely on private banks to provide operational and credit support for settlements; the utility itself would be a vehicle for administration and governance rather than a provider of services.

*A Private Limited-Purpose Bank*

The creation of a limited-purpose bank to function as the utility would concentrate depository and settlement activity within one entity, thereby concentrating operational risk. The ability of this model of utility to improve the operational resiliency of government securities settlements thus will depend upon the resources it devotes to backup facilities. The current system requires each clearing bank to incur these costs; so conceivably, a limited-purpose bank could devote more resources to backup facilities than an individual clearing bank but would still offer a cost savings. A limited-purpose bank is, by construction, less exposed to financial problems from unrelated activities than a full-service bank because of limits on the scope of its activities. Similarly, it is unlikely to voluntarily exit the business of clearing, having been created solely for that purpose.

The assessment of the ability of a limited-purpose bank to address financial and structural vulnerabilities in the government securities market is less sanguine if the utility does not provide triparty services and these services remain concentrated among a few banks. Triparty services are so integral to the financing of dealers in government securities markets that these markets will be operationally, financially, and structurally vulnerable to the banks that provide such services. These banks, which have broader business lines than a limited-purpose bank, will be vulnerable to losses in activities unrelated to clearing and triparty services. They are also free to make the business decision to voluntarily exit the triparty business. If the separation of core clearing from triparty services lowers the barriers to entry and attracts entrants to the triparty business, however, structural vulnerabilities would be ameliorated with a reduction in concentration.

The ability of this model to deliver services efficiently and innovatively will depend upon the governance structure of the limited-purpose bank. Assuming that users own the bank and control the governance structure, these users will have incentives to monitor costs and to create mechanisms for developing new products. In recent years, triparty repo services have been the area of most innovation in the clearing of government securities. Undoubtedly, the competition between the clearing banks has spurred the innovation. Some of this pressure to innovate thus might be lost if triparty services were provided exclusively by the utility. Over time, a failure to innovate in the triparty area could have adverse implications for dealer financing.

This model has several important implications for Federal Reserve policy. As was noted in the description of the limited-purpose bank, the Federal Reserve may be the only feasible entity to provide a backup liquidity facility of large enough size. Providing this facility to a limited-purpose bank would entail a change in policy with respect to discount window access for limited-purpose banks or trust companies. But it is not clear whether risk to the Federal Reserve or moral hazard would increase. With the current arrangements, the Federal Reserve effectively provides back-stop liquidity to the clearing banks. Providing the same liquidity to a utility might, in fact, entail less risk and moral hazard because of the restrictions on the utility's activities, more intense supervision of the utility, and greater transparency. The creation of this type of utility would also reduce (and might eliminate) the Federal Reserve's role in settling secondary market transactions for government securities. The vast majority of transactions would be settled on the books of the limited-purpose bank, particularly if it were providing triparty repo services as well as core clearing.

*Enhancement of Federal Reserve Services*

If the Federal Reserve provides accounts, credit, and services directly to dealers, the existing vulnerabilities in the government securities market would be reduced. Under this model, the Federal Reserve would be providing the operational support for the settlement process, and these enhanced products would be integrated into the existing backup contingency arrangements for the Fedwire system. The Federal Reserve's arrangements have been more robust than those of private-sector firms and other market utilities, and the Federal Reserve has spent appropriate amounts to meet contingency requirements. Federal Reserve services are not vulnerable to disruption because of financial difficulties.

To address vulnerabilities fully, the Federal Reserve may need to develop triparty repo as well as core clearing services. Alternatively, if the Federal Reserve limits its enhanced services to core clearing, there may be opportunities for a wider set of firms to offer triparty services, reducing structural vulnerability in the triparty market. A separation between core clearing and triparty repos, however, would require an additional transfer of securities from the dealer to the triparty provider, as in the current process with DTC-eligible securities used for triparty repos. The number of additional transfers could be reduced through the creation of a facility to transfer securities in blocks (bulk transfers) rather than security by security.

It is not clear whether this model could deliver services as cost effectively as the current system or how product innovation would be affected. Although the Federal Reserve is required to price services to cover its costs over the long run, the benefits of competition would be lost. Perhaps more significant in the long run, innovation would no longer be spurred by competition. Because the Federal Reserve is not subject to the same profitability constraints that a private-sector business is, some industry participants may view its assumption of the role of service provider for settlement services negatively.

Providing direct access to dealers would be a marked departure from existing Federal Reserve policy. The Federal Reserve would need to provide accounts and hundreds of billions of dollars of credit to nondepository institutions routinely during the day and, in a crisis, overnight. From a risk-management perspective, however, credit extensions presumably would be collateralized with highly liquid securities, and government securities brokers and dealers would be subject to federal regulation by the Commission or the Treasury.

Direct access to dealers could be perceived as providing dealers with broad access to liquidity support from the Federal Reserve. Any adverse effects on market discipline would be mitigated by federal regulation of the dealers, collateralization of the credit extensions, fees for intraday and overnight credit, and the potential for the Federal Reserve to impose quantity constraints on the amount of intraday

credit extensions. Still, expansion of access could raise concerns about moral hazard. Perception of a safety net extension might be further attenuated through some variant of this model that leaves the dealers' accounts in a depository institution. In addition, if the Federal Reserve were to provide triparty repo services, the issue of accounts for a broad set of institutional investors might arise unless market practices changed.

**Questions for Further Discussion**

1. Have the vulnerabilities in the government securities market been identified correctly? Are there other vulnerabilities that should be considered in evaluating the need for structural change?

2. Are there other structural approaches to a utility that should be given serious consideration besides the three basic options described in this paper? If so, what are they?

3. Are the evaluation criteria set out in this paper the relevant ones for assessing the merits of an industry utility? If not, what other criteria are relevant?

4. Can concerns about efficiency, innovation, and competition be addressed through governance? If so, how?

5. Is it feasible to separate the provision of core clearing from the provision of triparty repo services? Would the separation of core clearing from triparty repo enable other banks to compete more effectively in the provision of triparty services? Can triparty repo services be provided by a utility?

6. How much intraday credit would a utility need to provide in the settlement of government securities trades? Would a utility likely be able to arrange backup liquidity through committed lines of credit at commercial banks of the magnitude necessary to ensure timely settlement in the event a participant failed to cover an intraday credit extension?

7. What is the likely size of the initial investment to create an industry utility? What factors determine the effects of a utility on costs generally? On costs to dealers of core clearing services? On financing costs to dealers?

8. Who should own a private utility? How should its board of directors be chosen? What legal form should it take (for example, a bank, registered clearing agency, an Edge Act corporation)?

9. What should be the next steps in evaluating alternative structures? What type of decisionmaking framework should be created, and which groups should be represented in that process?

**Appendix 1**

**Clearing and Settlement Arrangements for Government Securities**

1. Within the universe of about 1,700 dealers, the trading of U.S. government securities is concentrated largely among 22 primary dealers and a handful of interdealer brokers (IDBs).

- Interdealer brokers collect dealer quotes, post them to electronic screen services, and execute trades between dealers, thereby facilitating price discovery, liquid markets, and anonymity in the interdealer market; about one-third of dealer-to-dealer trades are executed through an IDB.
- Among the primary dealers, most trading activity is concentrated in five to ten dealers.
- Trading activity includes dealer financing (repo) transactions and outright purchases and sales on behalf of customers and for the dealer's own account.

2. After a trade is executed, counterparties to the trade must compare trade details and determine settlement obligations (clearance).

- The Government Securities Clearing Corporation (GSCC) serves as the clearing utility and central counterparty for trade comparison and netting in the U.S. government securities market.
- GSCC is registered with and supervised by the Commission.
- Through trade comparison, netting, and central counterparty guarantees, GSCC decreases its participants' counterparty settlement risk and helps ensure orderly settlement in the marketplace.
- Each day, GSCC compares trades valued at more than $1.3 trillion. About one-third of these trades are for outright purchases and sales, and the remaining two-thirds are repo transactions.
- GSCC has 122 direct participants—consisting of dealers, interdealer brokers, investment managers, and banks—one-quarter of which use trade comparison services only.
- GSCC participants also clear trades for another 468 dealers, banks, and investment managers, through correspondent relationships. Generally, these correspondent relationships are for trade comparison services only.

3. Following the clearance process, securities must be exchanged for funds (settlement) on either a gross or a net basis.

- Government securities are transferred against funds (settled) through depository institutions acting as agents for nonbank dealers. Interbank settlement occurs through the Fedwire securities transfer system.
- Settlement typically occurs one business day after the trade (T+1), either through transfers on the books of a depository institution or, if settlement must occur between two depository institutions, on the books of the Federal Reserve through the Fedwire securities transfer system. Repo transactions generally settle on a same-day (T) basis.
- More than $800 billion in securities is transferred through the Fedwire securities transfer system each day.
- The two banks, Chase and The Bank of New York (BONY), that provide settlement services to primary dealers account for more than three-quarters of the value of Fedwire settlement activity. On a typical day, these two banks settle more than $600 billion in government securities transactions through Fedwire. The clearing banks apparently settle another $200 billion to $300 billion per day internally, excluding triparty repo transactions.
- GSCC settles net obligations valued at about $415 billion per day through its accounts at the two clearing banks.
- Chase's and BONY's client bases consist of the primary dealers, other dealers and banks, and GSCC.

4. The settlement of financing (repo) transactions occurs either through bilateral exchanges (delivery-versus-payment or DVP repos) of securities and funds between a dealer (borrower) and an investor (lender) or through the use of triparty repos on the books of the clearing banks.

- DVP repos are generally settled over Fedwire between 8:30 a.m. and 12:00 p.m., Eastern time.
- Triparty repos are settled after the close of the Fedwire securities transfer system, generally between 5:00 p.m. and 7:00 p.m., Eastern time. The two clearing banks estimate that together they settle on their books between $600 billion and $1 trillion in triparty repos each day.

**Appendix 2**

**Triparty Repo**

**The Market**

Understanding the role of the clearing banks in the clearance of U.S. government securities requires an appreciation of the triparty repo market and the critical role that such banks play in facilitating triparty repo transactions. Essentially, these transactions involve the secured financing of broker-dealer securities inventories by a large number of cash investors, with settlement occurring on the books of the clearing banks. Over the last decade, the importance of the triparty repo market grew significantly, so that now it is integral to the financing methods of all major broker-dealers and

involves nearly $1 trillion per day in transactions.

The success of the triparty repo market is due to its ability to meet the needs of both the broker-dealers who need secured financing and the cash investor community, who desire highly secure and liquid outlets for the investment of cash on a short-term basis. The cash investors in triparty repo consist of money market mutual funds and other institutional money managers such as pension funds. Both the pool of funds that such institutional investors need to invest and the size of the broker-dealer securities inventories have grown significantly in recent years, with no signs of a slowdown yet apparent. The clearing banks also benefit from providing triparty repo services as a profitable line of business and as an opportunity to cross-sell other custody and banking services to cash investors.

*Settlement: The Critical Role of the Clearing Banks*

In a typical triparty repo transaction, a broker-dealer contracts with a cash investor to provide a certain amount of securities in exchange for cash at the outset of the transaction, with the transaction to be unwound at the end of its term. All movements of cash and securities are to take place on the books of the broker-dealer's clearing bank. That is, both the broker-dealer and the cash investor will use cash and securities accounts at the clearing bank, and the clearing bank will play a critical role in settling the transaction. It is typical for the broker-dealer to pay for the setting up of accounts at its clearing bank on behalf of all its cash investors.

Triparty transactions are typically arranged early in the morning so that dealers can be assured of meeting their financing requirements. Importantly, however, these transactions typically do not specify the individual securities that the broker-dealer will provide as collateral. Rather the transactions are based on broad categories of collateral, such as U.S. government or agency securities. Different qualities of collateral engender different financing rates, and the triparty market has been steadily expanding beyond U.S. government securities to encompass a wide range of mortgage-backed securities, corporate bonds, and non-U.S. securities. However, U.S. government and agency securities remain the dominant form of triparty collateral, accounting for more than two-thirds of the total market.

The fact that triparty transactions do not uniquely specify individual securities is central to their appeal for the broker-dealer community. This flexibility allows the broker-dealers to trade their securities inventory during the normal business day, settling whatever transactions come due, without significant concern regarding their financing arrangements. For example, settlement of cash-market U.S. government and agency securities continues until 3:30 p.m. on a normal day, the time when the Fedwire book-entry transfer system closes. Soon after this point, the clearing banks begin to process the broker-dealer's triparty repo transactions. This processing involves comparing the generic triparty transactions that the broker-dealers have submitted with the specific securities that now reside in their accounts at the clearing bank. The clearing banks have developed routines for optimizing the allocation of specific collateral to individual triparty transactions to minimize the financing costs for the broker-dealers.

The collateral optimization and allocation routines run in the late afternoon, with settlement of the triparty transactions on the books of the clearing bank typically occurring in the early evening. The efficiency of these procedures, together with the familiarity of the broker-dealers with them, means that the need for residual financing (that is, securities to finance that cannot be financed through triparty repos) is generally only very small, on the order of 1 percent or less of their total eligible inventory.

*Benefits to Investors and Dealers*

Triparty arrangements between a broker-dealer and a cash investor may be either on an overnight or on a term basis. Importantly, however, even if the transactions are done on a term basis, all collateral is typically unwound on a daily basis (early in the morning). This daily unwinding has two implications. First, the cash investors get access to their funds on the books of the clearing bank on an intraday basis. Second, the broker-dealers get access to their securities inventory and thus can effectively ''substitute'' other collateral into the agreements as their inventory shifts over the term of the agreement.

From the cash investors' perspective, the triparty repo market provides a great deal of liquidity and safety for their cash holdings. During the day, the cash resides in deposit accounts at their clearing bank (or elsewhere if they choose to wire it back and forth, although most do not). Overnight, they are exposed to the credit risk of their broker-dealer counterparties but are protected by the presence of collateral held in their accounts at the relevant clearing bank. Moreover, the flexibility of the triparty arrangement allows them to frequently adjust the size of their cash investments as their pool of available funds fluctuates. For the broker-dealer, the triparty repo market obviously provides a highly flexible mechanism to minimize the costs of financing.

*Triparty Repo an Important Source of Intraday Overdrafts*

For the clearing banks, the triparty repo mechanism is an important complementary service to their core clearance activities in the underlying securities. However, a major implication of the triparty mechanism as currently designed is the presence of extremely large intraday overdrafts in the deposit accounts of the broker-dealers at the clearing banks. That is, because all the cash is returned to the cash investors daily, the entirety of a dealer's inventory is effectively financed by the clearing bank on an intraday basis. Still, the clearing bank is secured to the extent that the broker-dealer's securities remain at the bank. These figures can approach $100 billion for the largest individual dealers on peak days.

By order of the Board of Governors of the Federal Reserve System, May 7, 2002.

**Jennifer J. Johnson,**

*Secretary of the Board.*

By the Securities and Exchange Commission.

Dated: May 6, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## GENERAL SERVICES ADMINISTRATION

### Governmentwide Per Diem Advisory Board

**AGENCY:** General Services Administration.

**ACTION:** Establishment of Advisory Board.

**Establishment of Advisory Board**

This notice is published in accordance with the provisions of the Federal Advisory Committee Act (Public Law 92–463), and advises of the establishment of the GSA Governmentwide Per Diem Advisory Board. The Administrator of General Services has determined that the establishment of the Board is necessary and in the public interest.

**Purpose of the Advisory Board**

The Board will be used to obtain advice and recommendations on a wide

range of travel management and best practices issues. The Board's first priority will be to examine the current rate-setting process and methodology used to establish per diem rates for destinations within the continental United States. In addition, the Board will identify best practices for a Governmentwide lodging program.

**FOR FURTHER INFORMATION CONTACT:** The Office of Transportation and Personal Property, Office of Governmentwide Policy, is the organization within GSA that is sponsoring this board. For additional information, contact Joddy P. Garner (MTT), 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4857, or by e-mail at *joddy.garner@gsa.gov*

**Stephen A. Perry,**

*Administrator.*

[FR Doc. 02–11836 Filed 5–10–02; 8:45 am]

**BILLING CODE 6820–34–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–02–52]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

**Proposed Project**

State Surveys on Intimate Partner Violence (IPV) and Sexual Violence (SV)—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Violence against women has become a major public health issue in the nation. It is the leading cause of injury for women between the ages of 18 and 44. The National Violence Against Women Survey, conducted November 1995 to May 1996, estimates that approximately 1.9 million women are physically assaulted annually in this country by an intimate partner (*e.g.,* current of former husband, cohabiting partner, boyfriend or date). The 1994 National Crime Victimization Survey estimates that over 432,000 rapes or sexual assaults were perpetrated against U.S. females, age 12 years and older. The National Center for Injury Control and Prevention (NCIPC) has recognized intimate partner violence (IPV) and sexual violence (SV) as public health problems or several years. Survey data are the most common data used to determine incidence and prevalence rates, risk and resiliency factors and consequences (*e.g.,* physical injuries, psychological trauma) or IPV and SV. The Department of Justice (DOJ) has compiled a number of one-time looks at violence against women from a variety of perspectives, primarily provided by the criminal justice system, which counts only those cases that are reported.

There is a need for collection of standardized data on a consistent and continual basis, at the state and community levels in order to target limited resources towards populations in greatest need of prevention and intervention programs and services. As a result, the Centers for Disease Control and Prevention (CDC) plans to develop and pilot test two surveys on IPV and SV for possible inclusion in the Behavioral Risk Factor Surveillance System (BRFSS). The surveys will be administered to non-institutionalized women and men, 18 years of age and older. The pilot test will be conducted through a computer-assisted telephone interviewing system, using a sample of women and men randomly selected from six states. The overall benefit of this pilot is to increase knowledge regarding the magnitude and scope of violence against women and men in the U.S. Ultimately, the CDC intends to establish an on-going data collection system for monitoring IPV and SV at the state level.

The goals of the project are to: (1) Determine the questions' utility, participant reactions, and length of surveys; and (2) compile and disseminate the results of the pilot test and prepare a report for submission to the BRFSS coordinators for consideration for inclusion as an optional module for FY 2003. There is no cost to respondents.

| Survey (IPV/SV) | Type of respondent | Number of respondents/ survey | Number of responses/ respondent | Avg. burden/ responses (in hours) | Total burden hours |
|---|---|---|---|---|---|
| State 1 | Female/Male | 2400 | 1 | 30/60 | 1,200 |
| State 2 | Female/Male | 2400 | 1 | 30/60 | 1,200 |
| State 3 | Female/Male | 2400 | 1 | 30/60 | 1,200 |
| State 4 | Female/Male | 2400 | 1 | 30/60 | 1,200 |
| State 5 | Female/Male | 2400 | 1 | 30/60 | 1,200 |
| State 6 | Female/Male | 2400 | 1 | 30/60 | 1,200 |
| Total | | | | | 7,200 |

Dated: May 2, 2002.

**Nancy E. Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 02–11830 Filed 5–10–02; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

**[Document Identifier: CMS–R–106]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection.

*Title of Information Collection:* Criteria for Medicare Coverage of Heart Transplants.

*Form No.:* CMS–R–106 (OMB# 0938–0490).

*Use:* Medicare Participating Hospitals must file an application to be approved for coverage and payment of heart transplants performed on Medicare beneficiaries. This information collection specifies the criteria for approval.

*Frequency:* Annually.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 4.

*Total Annual Responses:* 4.

*Total Annual Hours:* 400.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Dawn Willinghan, CMS–R–106, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 24, 2002.

**John P. Burke, III,**

*Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.*

[FR Doc. 02–11820 Filed 5–10–02; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

**[Document Identifier: CMS–1513]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**TYPE OF INFORMATION COLLECTION REQUEST:** Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Medicare/Medicaid Disclosure of Ownership and Control Interest Statement and Supporting Regulations in 42 CFR 420.200–.206, 455.100–.106 and 45 CFR 228.72–.73; *Form No.:* HCFA–1513 (OMB# 0938–0086); *Use:* The Medicare/Medicaid Disclosure of Ownership and Control Interest Statement must be used by State agencies and HCFA regional offices to determine whether providers meet the eligibility requirements for Titles 18 and 19 (Medicare and Medicaid) and for grants under Titles V and XX. Review of ownership and control is particularly necessary to prohibit ownership and control for individuals excluded under Federal fraud statutes; *Frequency:* Other (every 1 to 3 years); *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 92,000; *Total Annual Responses:* 92,000; *Total Annual Hours:* 46,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address:

CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown, CMS–1513, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 30, 2002.

**John P. Burke, III,**

*Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, 7500 Security Boulevard, Baltimore MD 21244.*

[FR Doc. 02–11821 Filed 5–10–02; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

**[Document Identifier: CMS–R–232]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. *Type of Information Collection Request:* Extension; *Title of Information Collection:* Supporting Statement for Medicare Program Integrity Program Organizational Conflict of Interest Disclosure Certificate and Supporting Regulations in 42 CFR 421.300 and 421.318; *Form No.:* CMS–R–232 (OMB# 0938–0723); *Use:* This information is used to assess whether contractors who perform, or who seek to perform, Medicare Integrity Program functions, such as medical review, fraud review or cost audits, have organizational conflicts of interest and whether any conflicts have been resolved. The entities providing the information will be organizations that have been awarded, or seek award of, a Medicare Integrity Program contract; *Frequency:* On occasion; *Affected Public:* Businesses or other for profit; *Number of Respondents:* 5; *Total Annual Responses:* 5; *Total Annual Hours:* 1,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address:

CMS, Office of Information Services,
Security and Standards Group,
Division of CMS Enterprise Standards,
Attention: Julie Brown, CMS R 232,
Room N2–14–26,
7500 Security Boulevard,
Baltimore, Maryland 21244–1850.

Dated: April 30, 2002.

**John P. Burke, III,**

*Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, 7500 Security Boulevard, Baltimore MD 21244.*

[FR Doc. 02–11822 Filed 5–10–02; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

**[Document Identifier: CMS–10059]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* New Collection.

*Title of Information Collection:* Survey of Medicare Private Fee-for-Service (PFFS) Enrollees and Nonenrollees.

*Form No.:* CMS–10059 (OMB# 0938–NEW).

*Use:* Private fee-for-service was established in the Balanced Budget Act (BBA) of 1997 as an important variant of the Medicare+Choice program. As of September 2001, the only PFFS product was being offered by Sterling Insurance Company in some or all of 25 states with enrollees 24,300 including disenrollees. CMS wishes to survey approximately 6,322 enrollees and nonenrollees to evaluate the impact of this option on Medicare beneficiary on their awareness and knowledge of PFFS, decision making for/against PFFS, access to care, out-of-pocket costs, satisfaction with PFFS, etc.

*Frequency:* Other: One-time.

*Affected Public:* Individuals or Households.

*Number of Respondents:* 6,322.

*Total Annual Responses:* 6,322.

*Total Annual Hours:* 1,581.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 24, 2002.

**John P. Burke, III,**

*CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.*

[FR Doc. 02–11817 Filed 5–10–02; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

**[Document Identifier: CMS–R–79]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection.

*Title of Information Collection:* Payment Adjustment for Sole Community Hospitals and Supporting Regulations in 42 CFR, section 412.92.

*Form No.:* CMS–R–79 (OMB# 0938–0477).

*Use:* Hospitals designated ''sole community hospitals'' that experience a 5 percent decrease in discharges in one cost reporting period, as compared to the previous period, due to unusual circumstances beyond its control, may request an adjustment to its Medicare payment amount.

*Frequency:* On Occasion.

*Affected Public:* Not-for-profit institutions, Business or other for-profit, and State, Local or Tribal Gov.

*Number of Respondents:* 40.

*Total Annual Responses:* 40.

*Total Annual Hours:* 160.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS'' Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 24, 2002.

**John P. Burke, III,**

*CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.*

[FR Doc. 02–11818 Filed 5–10–02; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

**[Document Identifier: CMS–10061]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* New Collection.

*Title of Information Collection:* Evaluation of Programs of Coordinated Care and Disease Management.

*Form No.:* CMS–10061 (OMB# 0938–NEW).

*Use:* CMS is currently conducting two demonstration programs to determine the impact of programs of coordinated care and disease management on health outcomes and costs of care for Medicare beneficiaries. The purpose of this evaluation is to provide an independent assessment of the effectiveness of these programs, and to provide the basis for the Reports to Congress required for the care coordination demonstration. To provide this information, the evaluation must generate both rigorous quantitative estimates of the programs' impacts and qualitative analyses of the programs' processes. Surveys of demonstration participants and their health care providers are an integral part of this evaluation.

*Frequency:* Other: One-time.

*Affected Public:* Individuals or Households, Business or other for-profit, and Not-for-profit institutions.

*Number of Respondents:* 11,356.

*Total Annual Responses:* 11,356.

*Total Annual Hours:* 5,465.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 24, 2002.

**John P. Burke, III,**

*CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.*

[FR Doc. 02–11819 Filed 5–10–02; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

**[Document Identifier: CMS–10057]**

### Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

**AGENCY:** Center for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures because of an unanticipated event and possible public harm.

This document involves CMS initiatives pertaining to family or individual directed community services. To obtain CMS approval, two application methods are offered to enable States to implement the self-directed model. (1) Under section 1915(c) of the Social Security Act, states are allowed to submit a request to the Secretary of Health and Human Services to waive Medicaid requirements to allow provision of home and community-based services as an alternative to Medicaid funded institutional care. (2) Under section 1115 of the Social Security Act, states are allowed to submit a request to the Secretary of Health and Human Services to waive Medicaid requirements for the purpose of an experimental, pilot, or demonstration project which promotes the objective of the Medicaid program. States may select whichever method will be appropriate to the unique design of their specific program.

*Independence Plus:* A Demonstration Program for Family or Individual Directed Community Services Template Applications facilitate States' provision of self-directed supports and services and promotes DHHS' goals of increasing access to medically necessary services. By using a template, a State will potentially save a great deal of time in applying and be able to provide the services earlier.

CMS is requesting OMB review and approval of this collection by May 22, 2002, with a 180-day approval period. Written comments and recommendation will be accepted from the public if received by the individuals designated below by May 20, 2002.

*Type of Information Collection Request:* New collection.

*Title of Information Collection: Independence Plus:* A Demonstration Program for Family or Individual Directed Community Services Template Applications.

*Form No.:* CMS–10057 (OMB# XXXX).

*Use:* The Family or Individual Directed Community Services Template Applications will enable states to apply, via a standard format, to provide assistance for families with a member who requires long term supports and services, or individuals who require long term supports and services, so that the individual may remain in the family residence or in their own home.

*Frequency: Other:* 3 years after initial submission for the 1915 (c) waiver; 5 years after initial submission for the 1115 demonstration.

*Affected Public:* State Government.

*Number of Respondents:* 20.

*Total Annual Responses:* 20.

*Total Annual Hours:* 100.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by May 20, 2002:

Centers for Medicare and Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Fax Number: (410) 786–0262, Attn: Julie Brown, CMS–10057,
and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn.: Brenda Aguilar, CMS Desk Officer.

Dated: May 7, 2002.

**John P. Burke, III,**

*Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.*

[FR Doc. 02–11963 Filed 5–9–02; 11:04 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Office of Planning, Research and Evaluation; Grant to the National Center for Appropriate Technology

**AGENCY:** Office of Planning, Research and Evaluation, ACF, DHHS.

**ACTION:** Award Announcement.

**SUMMARY:** Notice if hereby given that a noncompetitive grant award is being made to the National Center for Appropriate Technology (NCAT) to develop a national energy deregulation clearinghouse.

As a Congressional set-aside, this one-year project is being funded noncompetitively. The National Center for Appropriate Technology is uniquely qualified to conduct this project because of their prior experience in analyzing energy-related issues affecting residential consumers with low and moderate incomes. The cost of this one-year project is $150,000.

**FOR FURTHER INFORMATION CONTACT:** Charlotte Abney, Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade, SW, Washington, DC. 20447, telephone: 202–401–5334.

Dated: April 26, 2002.

**Howard Rolston,**

*Director, Office of Planning, Research and Evaluation.*

[FR Doc. 02–11798 Filed 5–10–02; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Request for Nominations for Voting Members on Public Advisory Committee; Veterinary Medicine Advisory Committee

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Veterinary Medicine Advisory Committee (VMAC) in one of the following specialty areas: Pharmacology, Minor Species/Minor Use Veterinary Medicine, and pathology. Nominations for the VMAC chairperson are also being solicited. Information regarding the committee can be found on the CVM home page at http://www.fda.gov/cvm/index/vmac/vmactoc.htm.

FDA has a special interest in ensuring that women, minority groups, and the physically challenged are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

**DATES:** FDA is seeking nominations for voting members, as well as, nominations for the VMAC chairperson by May 15, 2002. Because scheduled vacancies occur on various dates throughout each subsequent year, no cutoff date for those specialty areas has been established.

**ADDRESSES:** All nominations and curricula vitae should be sent to the appropriate contact person in the **FOR FURTHER INFORMATION CONTACT** section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Regarding nominations except for consumer representatives: Aleta Sindelar, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4515, e-mail: asindela@cvm.fda.gov.

Regarding nominations for consumer representatives: Linda Sherman, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

**SUPPLEMENTARY INFORMATION:** FDA is requesting nominations for voting members to serve on the committee. The function of the VMAC is to advise the Commissioner of Food and Drugs (the Commissioner) in discharging their responsibilities as they relate to assuring safe and effective drugs, feeds and feed additives, and devices for animal use, and, as required, any other product for which FDA has regulatory responsibility. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal diseases and increased animal production, and makes appropriate recommendations to the Commissioner regarding scientific issues and regulatory policies.

**Qualifications**

Persons nominated for membership on the committee shall have adequately diversified experience that is appropriate to the work of the committee in such fields as companion animal medicine, food animal medicine, avian medicine, microbiology, biometrics, toxicology, pathology, pharmacology, animal science, public health/epidemiology, Minor Species/Minor Use Veterinary Medicine, and chemistry. The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee. The term of office is 4 years. The committee currently has three vacancies and is requesting nominations for voting members to serve on one of the following specialty areas: Pharmacology, Minor Species/Minor Use Veterinary Medicine, and pathology. Nominations for the VMAC chairperson are also being solicited.

**Nomination Procedures**

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Self-nominations are also accepted. Nominations shall include the name of the committee, a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: May 2, 2002.

**Bonnie Malkin,**

*Acting Senior Associate Commissioner for Communications and Constituent Relations.*

[FR Doc. 02–11787 Filed 5–10–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Traumatic Brain Injury Program; Traumatic Brain Injury Protection and Advocacy Grants

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of availability of funds.

**SUMMARY:** The Health Resources and Services Administration (HRSA) announces that $1.5 million in fiscal year (FY) 2002 funds is available for up to 33 Protection and Advocacy (P&A) Grants to existing State P&A systems to provide services to individuals with traumatic brain injury (TBI). P&A services include the provision of (1) information, referrals and advice; (2) individual and family advocacy; (3) legal representation; and (4) specific assistance in self-advocacy. Currently, an estimated 5.3 million individuals are living with the effects of TBI. TBI can cause chronic physical impairments, and long-term problems with cognition, emotional functioning, and behavior. A recent study by the U.S General Accounting Office (GAO) found that many individuals with TBI are not receiving the services they need to remain in the community. The purpose of these grants is to improve access and coordination of TBI services and supports for individuals and their families. All grants will be made under the program authority of the Public Health Service Act, Title XII, Section 1253 (42 U.S.C. 300d–53), and will be administered by the Maternal and Child Health Bureau (MCHB), HRSA. Awards for TBI P&A grants may be approved for up to three years. States are eligible for $50,000 each. Territories and American Indian Consortia are eligible for $20,000 each. Funding after the initial year is contingent upon the availability of funds.

**DATES:** Applicants are expected to notify MCHB of their intent by May 24, 2002. The deadline for receipt of applications is June 14, 2002. Applications will be considered ''on time'' if they are either received on or before the deadline date or postmarked on or before the deadline

date. The projected award date is August 19, 2002.

**ADDRESSES:** To receive a complete application kit, applicants may telephone the HRSA Grants Application Center at 1–877–477–2123 (1–877–HRSA–123) beginning May 14, 2002, or register on-line at: *http://www.hrsa.gov/_order3.htm* directly. The Traumatic Brain Injury P&A Grant Program uses the standard Form PHS 5161–1 (rev. 7/00) for applications (approved under OMB No. 0920–0428). Applicants must use Catalog of Federal Domestic Assistance (CFDA) #93.234D when requesting an application kit. The CFDA is a Government-wide compendium of enumerated Federal programs, project services, and activities that provide assistance. All applications must be mailed or delivered to Grants Management Officer, MCHB: HRSA Grants Application Center, 901 Russell Avenue, Suite 450 Gaithersburg, MD 20897 telephone 1–877–477–2123: E-mail: *hrsagac@hrsa.gov.* Necessary application forms and an expanded version of this **Federal Register** notice may be downloaded in either Microsoft Office 2000 or Adobe Acrobat format (.pdf) from the MCHB Home Page at *http://www.mchb.hrsa.gov.* Please contact Joni Johns, at 301/443–2088, or *jjohns@hrsa.gov,* if you need technical assistance in accessing the MCHB Home Page via the Internet. This notice will appear in the **Federal Register** and or HRSA Home page at *http://www.hrsa.gov/.* **Federal Register** notices are found on the World Wide Web by following instructions at: *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

Letter of Intent: Notification of intent to apply should be directed to Betty Hastings, M.S.W., by email, *bhastings@hrsa.gov;* or mail, MCHB, HRSA; Traumatic Brain Injury Program, Parklawn Building, Room 18A–38; 5600 Fishers Lane; Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Betty Hastings, M.S.W., 301/443–5599, or e-mail: *bhastings@hrsa.gov* (for questions specific to project objectives and activities of the program; or the required Letter of Intent); Marilyn Stewart, 301/443–1440, email *mstewart@hrsa.gov* (for grants policy, budgetary, and business questions).

**SUPPLEMENTARY INFORMATION:**

**Traumatic Brain Injury Program Background and Objectives**

Traumatic brain injury (TBI) is sudden physical damage to the brain, often caused by motor vehicle accidents, falls, sports injuries, violent crimes, or child abuse. TBI can result in physical, behavioral, and/or mental changes, depending on the areas of the brain that are injured. TBI is the leading cause of death and disability among young people in the United States. Approximately 200,000 Americans die each year from traumatic injuries. An additional half million are hospitalized. About 10 percent of the surviving individuals have mild to moderate problems that threaten their ability to live independently. Another 200,000 have serious problems that may require institutionalization or some other form of close supervision.

The number of people surviving TBI has increased significantly in recent years because of more effective emergency care; transportation to specialized treatment facilities, and acute medical management. Currently, an estimated 5.3 million Americans are living with the effects of TBI. The direct medical costs for treatment of TBI have been estimated to be over $4.5 billion, annually.

Although TBI can cause chronic physical impairments, often the individual has more disability due to problems with cognition, emotional functioning, and behavior in connection with interpersonal relationships, school, or work. The result is frequently a dramatic change in the individual's life-course, profound disruption of the family, and huge medical and related expenses over a lifetime. Rehabilitation efforts can require years of treatment, starting in the hospital, and extending through formal inpatient and outpatient rehabilitation to a variety of day treatment or residential programs.

The cognitive and communication problems of TBI are best treated early; often beginning while the individual is still in the hospital. Longer-term rehabilitation may be performed individually, in groups, or both, depending on the needs of the individual. This therapy often occurs in a rehabilitation facility designed specifically for the treatment of individuals with TBI. The goal of rehabilitation is to help affected individuals progress to the most independent level of functioning possible. Therapy focuses on regaining lost skills, as well as learning ways to compensate for abilities that have been permanently changed because of TBI.

According to a recent GAO study of services, adults with TBI often have permanent disability that requires long-term supportive services to remain in the community. In an analysis of eleven States, the gap between the number of individuals with TBI receiving long-term services and the estimated number of disabled adults with TBI remains wide.

Until FY 2002, two categories of TBI demonstration grants were available: (1) State TBI Planning Grants and (2) State TBI Implementation Grants. Thirty-three States and the District of Columbia received planning grants to develop an Action Plan to improve the State's TBI service system. Grantees developed four ''core capacity'' components: (1) A statewide TBI Advisory Board; (2) designated State agency and staff position(s) responsible for State TBI activities; (3) a statewide needs/resource assessment to address the full spectrum of services from initial acute treatment through rehabilitation and long-term community services for individuals with TBI; and (4) a statewide Action Plan outlining steps needed to develop a comprehensive, community-based system of care encompassing physical, psychological, educational, vocational, and social aspects of TBI services, and addressing the needs of individuals with TBI and their families.

Twenty-six States received Implementation Grants. States used these grants to focus on key priorities identified in their statewide action plans, including: (1) Leadership in integrating individuals with TBI and their families into the broader service delivery system; (2) human resources, personnel, training, and education on TBI issues; (3) data collection, evaluation, and information management to improve delivery of TBI services; (4) public information and education regarding TBI issues; (5) and coordination with other public health and disability community services.

The Children's Health Act of 2000, Public Law 106–310, established two additional grant categories: (1) Post Demonstration Grants for States that have successfully completed a TBI Implementation Grant, and (2) TBI Protection and Advocacy (P&A) grants. This notice announces the availability of funds specifically for P&A grants. The purpose of P&A grants is to provide (1) information, referrals and advice; (2) individual and family advocacy; (3) legal representation; and (4) specific assistance in self-advocacy to individuals with TBI and their families.

*Authorization:* Public Health Service Act, Title XII, Section 1253, 42 U.S.C. 300d–53.

*Purpose:* As Congress recognized with the passage of the Traumatic Brain Injury Act of 1996 and its reauthorization in the Children's Health Act of 2000, there is a pressing need for improved access to and coordination of TBI services and support for individuals with TBI and their families.

Additionally, Congress recognized that State (including Tribal and Territorial) P&A systems are critical to achieving the goals and objectives of the TBI Act. Thus, section 1253 includes language authorizing the Secretary, acting through the Administrator of HRSA, to make grants to existing State P&A systems for the purposes of strengthening P&A service delivery to individuals with TBI and their families. The planning and assessment of State TBI P&A systems, responsiveness to TBI issues, and outreach strategies to the brain injury community are critical to ensure that P&A services will be delivered appropriately for individuals with TBI and their families.

The purpose of these grants, therefore, is to enable State P&A systems to develop a plan to address the needs of individuals with TBI and their families. These plans are expected to identify the resources and operational structure needed to provide P&A services to individuals with TBI, identify information needs and develop the ability to provide information and advocacy training for individuals with TBI and their families, present a mechanism for sustaining TBI P&A activities in their States, and provide an operational structure for implementing the plan and providing P&A services. Thus, P&A grantees may work with individuals with TBI, their families, State TBI grantees, and other stakeholders to: (1) Assess statewide needs and capacity; (2) determine the best approach for identifying individuals and families within and outside the State service system; (3) develop and provide P&A-related education and training materials; and, (4) develop an action plan that provides a mechanism for serving individuals with TBI and their families.

*Eligibility:* Eligible for funding are: State P&A systems established under part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6042 *et seq.*) in the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and American Indian Consortia established under part C of the Developmental Disabilities Assistance Bill of Rights Act (42 U.S.C. 6042 *et seq.*).

*Funding Level/Project Period:* Projects will be approved for up to three years. States are eligible for $50,000 each. Territories and American Indian Consortia are eligible for $20,000 each. MCHB expects to award 28 P&A grants to States, and 5 P&A grants to U.S. Territories and American Indian Consortia. The initial budget period for TBI P&A Grants is expected to be 12 months, with any subsequent budget period being 12 months. Continuation of any TBI project from one budget period to the next is subject to satisfactory performance, program priorities, and availability of funds.

*Review Criteria:* An objective review panel will evaluate applications for P&A grants. Based on the quality of the responses, an application may receive up to 100 points on the following review criteria:

1. A plan to enable the P&A system to provide services for individuals with TBI and their families (25 points).

- The proposed services.
- The balance of individual TBI cases and systemic work.
- Recognition of the unique needs of the area.

2. A comprehensive approach to collaboration, partnership and outreach (25 points).

- Established relationships with the brain injury community.
- The evidence and breadth of collaboration demonstrated in the narrative and letters of support.
- Participation with the State TBI State grant project if one exists.

3. A demonstrated knowledge of the needs of individuals with TBI and their families (25 points).

- Financial and human resources have been committed by the State P&A towards improving the services for individuals for TBI and their families.
- The roles, responsibilities and skills of the project staff are sufficient to meet the goals and objectives of the project within the proposed time period.
- The project management plan is reasonable and will build State P&A capacity.

4. Project Evaluation (25 points).

- The methodology that will be used to achieve the goals and objectives of the project.
- The strength of the project evaluation plan.

Additional criteria may be used to review and rank applications for this competition. Any such criteria will be identified in the program guidance included in the application kit. Applicants should pay strict attention to addressing these criteria, as they are the basis upon which their applications will be judged.

**Paperwork Reduction Act**

OMB approval for any data collection in connection with these grants will be sought, as required under the Paperwork Reduction Act of 1995.

**Executive Order 12372**

This program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States that have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOCS as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to ''accommodate or explain'' for State process recommendations it receives after that date. (See Part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

Dated: April 12, 2002.

**Elizabeth M. Duke,**

*Administrator.*

[FR Doc. 02–11832 Filed 5–10–02; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; Comment Request; A Follow-Up Survey of National Cancer Institute Science Enrichment Program Students

**SUMMARY:** Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 9, 2001, pages 18488–18489 and allowed 60 days for public comment. No public

comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Proposed Collection:* Title: A Follow-up Survey of National Cancer Institute Science Enrichment Program Students. Type of Information Collection Request: New. Need and Use of Information Collection: This survey will investigate the long-term effects of the National Cancer Institute's Science Enrichment Program. The primary objective of the survey is to determine if past NCI SEP student participants are pursuing science education and science careers. The findings will provide information regarding the effectiveness of the program and will inform decisions about continuing and expanding the program. Frequency of Response: One time. Affected Public: Individuals. Type of Respondents: Young adults (18–23 years old). The annual reporting burden is as follows: Estimated Number of Respondents: 448; Estimated Number of Responses per Respondent: 1; Average Burden Hours Per Response: .2500; and Estimated Total Annual Burden Hours Requested: 112. The annualized cost to respondent is estimated at $4,480. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20530, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Mr. Frank Jackson, Office of Special Populations Research, National Cancer Institute, National Institutes of Health, Executive Plaza South, Room 320, 6120 Executive Boulevard, Rockville, MD 20852, or call non-toll-free number (301) 496–8589, or E-mail your request, including your address to *fj12i@nih.gov*

*'Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: May 6, 2002.

**Reesa L. Nichols,**

*NCI Project Clearance Liaison.*

[FR Doc. 02–11800 Filed 5–10–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–920–09–1320–EL, WYW155637]**

### Coal Lease Exploration License, WY

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of invitation for coal exploration license.

**SUMMARY:** Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201(b), and to the regulations adopted as 43 CFR part 3410, all interested parties are hereby invited to participate with Cordero Mining Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, WY:

T. 46 N., R. 71 W., 6th P.M., Wyoming
Sec. 4: Lots 5–20;
Sec. 5: Lots 5, 6, 11–14, 19, 20;
T. 47 N., R. 71 W., 6th P.M., Wyoming
Sec. 8: Lots 3–6, 11–13;
Sec. 17: Lots 1–15, SWNW;
Sec. 21: Lots 1–16;
Sec. 28: Lots 1–16;
Sec. 33: Lots 1–16.
Containing 3864.40 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Coal Leasing Area. The purpose of the exploration program is to obtain coal quality data.

**ADDRESSES:** The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the BLM. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under WYW155637): BLM, Wyoming State Office, 5353 Yellowstone Rd, PO Box 1828, Cheyenne, WY 82003; and, BLM, Casper Field Office, 2987 Prospector Drive, Casper, WY 82604.

**SUPPLEMENTARY INFORMATION:** This notice of invitation will be published in ''The News-Record'' of Gillette, WY, once each week for two consecutive weeks beginning the week of May 15, 2002, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the BLM and Cordero Mining Company no later than thirty days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Cordero Mining Company, Attn: Tom Stedtnitz, PO Box 1449, Gillette, WY 82717–1449, and the BLM, Wyoming State Office, Branch of Solid Minerals, Attn: Julie Weaver, PO Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Dated: March 27, 2002.

**Phillip C. Perlewitz,**

*Chief, Branch of Solid Minerals.*

[FR Doc. 02–11441 Filed 5–10–02; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–060–1990]**

### Notice of Intent To Prepare an Environmental Impact Statement to Analyze the Proposed Pediment Plan of Operations

**AGENCY:** Bureau of Land Management, Interior.

**COOPERATING AGENCIES:** Nevada Division of Wildlife.

**ACTION:** Notice of Intent to Prepare an Environmental Impact Statement to analyze the Proposed Pediment Project Plan of Operations for Cortez Gold Mines and notice of public scoping meetings.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), 40 Code of Federal Regulations 1500–1508 Council on

Environmental Quality Regulations, and 43 Code of Federal Regulations 3809, the Bureau of Land Management's Battle Mountain Field Office will be directing the preparation of a third-party Environmental Impact Statement (EIS) to analyze a proposed new open pit, heap leach facility, and ancillary facilities. The project will involve public and private lands in Lander County, Nevada.

**DATES:** Written comments must be post-marked or otherwise delivered by 4:30 p.m. on June 24, 2002. Comments may also be presented at public meetings to be held:

June 5, 2002 (7–9 p.m.), Community Center in Crescent Valley, NV

June 6, 2002 (7–9 p.m.) BLM Battle Mountain Field Office, Battle Mountain, NV

**ADDRESSES:** Written comments should be addressed to the Bureau of Land Management, Battle Mountain Field Office, Attention: Pam Jarnecke, 50 Bastian Road, Battle Mountain, Nevada 89820.

**FOR FURTHER INFORMATION CONTACT:** Pam Jarnecke, Battle Mountain BLM, at (775) 635–4144.

**SUPPLEMENTARY INFORMATION:** The purpose of these meetings is to identify potentially significant issues to be addressed in the EIS, to determine the scope of issues to be addressed, to identify viable alternatives, and to encourage public participation in the NEPA process. Additional briefings will be considered, as appropriate.

Comments, including names and street addresses of respondents, will be available for public review at the Battle Mountain Field Office located in Battle Mountain, Nevada, during regular business hours, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Cortez Gold Mines has submitted a proposal to develop a mining facility approximately 40 miles south of Beowawe in Lander County, Nevada. The proposed mining development would involve 1,766 acres of disturbance including a new open pit, a new heap leach facility, new waste rock dumps, widening a portion of the Horse Canyon haul road to 150 feet, and relocation of a portion of the county road that is within the project area.

**Gerald M. Smith,**

*Field Manager, Battle Mountain Field Office.*

[FR Doc. 02–11869 Filed 5–10–02; 8:45 am]

**BILLING CODE 4310–HC–P**

## DEPARTMENT OF JUSTICE

### Office of Community Policing Services

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-day notice of information collection under review: New collection; tribal resources grant program hiring progress Report.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 25, page 5611 on February 6, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 12, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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

**Overview of This Information Collection**

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* COPS Tribal Resources Grant Program Hiring Progress Report.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federally Recognized Tribal governments: Other: None. Abstract: The information collected will be used by the COPS Office to determine grantee's progress toward grant implementation and for compliance monitoring efforts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 200 responses. The estimated amount of time required for the average respondent to respond is: 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: May 7, 2002.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, United States Department of Justice.*

[FR Doc. 02–11815 Filed 5–10–02; 8:45 am]

**BILLING CODE 4410–AT–M**

**DEPARTMENT OF LABOR**

**Office of the Secretary**

## Women's Bureau; Proposed Information Collection Request Submitted for Public Comment and Recommendations; Women in Apprenticeship and Nontraditional Occupations (WANTO) Act Grant Application and Reporting Requirements

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general Public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) ( 44 U.S.C. 3506(c) (2) (A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

**DATES:** Submit comments on or before July 12, 2002.

**ADDRESSES:** Send comments to the Women's Bureau, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210, to the attention of Diane Faulkner. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to Faulkner-Diane@dol.gov, along with an original printed copy. Ms. Faulkner can be reached at (202) 693–6752 (voice) or (202) 693–6776 (facsimile).

**FOR FURTHER INFORMATION CONTACT:** Diane Faulkner, Economist, U.S. Department of Labor, Women's Bureau, 200 Constitution Ave., N.W., Washington, DC 20210. Ms Faulkner can be reached at *Faulkner-Diane@dol.gov* (Internet E-mail), (202) 693–6752 (voice), or (202) 693–6776 (facsimile).

**SUPPLEMENTARY INFORMATION:**

### 1. Background

The Women in Apprenticeship and Nontraditional Occupations (WANTO) Act of 1992 stipulates that:

''Each community-based organization that desires to receive a grant to provide technical assistance under section 2503(a) of this title to employers and labor unions, shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

In awarding grants under section 2503(a) of this title, the Secretary shall give priority to applications from community-based organizations that—

(1) demonstrate experience preparing women to gain employment in apprenticeable occupations or other nontraditional occupations;

(2) demonstrate experience working with the business community to prepare them to place women in apprenticeable occupations or other nontraditional occupations;

(3) have tradeswomen or women in nontraditional occupations as active members of the organization, as either employed staff or board members; and

(4) have experience delivering technical assistance.''

### II. Desired Focus of Comments

Currently the Office of the Secretary, Women's Bureau is soliciting comments concerning the grant application and reporting requirements for the Women in Apprenticeship and Nontraditional Occupations (WANTO) Act grants. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

### III. Current Actions

For every fiscal year for which WANTO Act grant funds are included in the Federal budget, the following process takes place during that fiscal year:

- A Solicitation for Grant Applications (SGA) is published in the Federal Register.
- Applications received by the specified deadline are reviewed and evaluated.
- By September 30, grants are awarded to those community-based organizations ranked highest by the evaluation panel.

Since the agency generally has enough funds appropriated for awarding grants to only one-third of the applicants, the panelists ranking the applications need enough information to be able to rate and rank the proposals fairly and equitably. The applicants need to provide clear documentation of their organization's viability, their potential for completing their proposal, their ability to meet the intent of the WANTO Act, and their ability to establish linkages with employers and labor unions. The information required in the quarterly and final reports is the minimal information required by grant monitoring administrative requirements for nonprofit organizations, *i.e.* what goals have been met, which have not been met (and why), and any difficulties encountered.

*Type of Review:* New.

*Agency:* Office of the Secretary, Women's Bureau.

*Title:* Women in Apprenticeship and Nontraditional Occupations (WANTO) Act Grant Application and Reporting Requirements.

*OMB Number:* 1225–0NEW.

*Recordkeeping:* Records are normally required to be kept for 3 years.

*Affected Public:* Not-for-profit institutions.

*Cite/Reference/Form/etc.:* 29 U.S.C. 2501 *et seq.*

*Total Respondents:* 40.

| Requirement | Frequency | Estimated number of responses | Average response time (hours) | Estimated annual burden hours |
|---|---|---|---|---|
| Grant Application: | | | | |
| Previous Applicant | Annually | 30 | 6 | 180 |

| Requirement | Frequency | Estimated number of responses | Average response time (hours) | Estimated annual burden hours |
|---|---|---|---|---|
| New Applicant | Annually | 10 | 12 | 120 |
| Quarterly Reports: | | | | |
| Previous Applicant | Quarterly | 9 | 2 | 72 |
| New Applicant | Quarterly | 3 | 5 | 60 |
| Final Report: | | | | |
| Previous Applicant | Annually | 9 | 4 | 36 |
| New Applicant | Annually | 3 | 10 | 30 |
| Totals | | 64 | | 498 |

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintaining):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 6, 2002.

**Loretta Herrington,**

*Deputy Director, Women's Bureau, Office of the Secretary.*

[FR Doc. 02–11883 Filed 5–10–02; 8:45 am]

**BILLING CODE 4510–23–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[SGA/DFA 02–108]**

### Grants for Small Faith-Based and Community-Based Non-Profit Organizations; Amendment

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice; amendment.

**SUMMARY:** The Employment and Training Administration published a document in the **Federal Register** of April 17, 2002, concerning the availability of grant funds to award a grant to ''grass-roots'' organizations or small faith-based and community-based non-profit organizations with the ability to connect to the nation's workforce development system. The document is hereby amended.

**FOR FURTHER INFORMATION CONTACT:** Linda Forman, Grants Management Specialist, Division of Federal Assistance, Fax (202) 693–2879.

### Amendment

In the **Federal Register** of April 17, 2002, in FR Doc. 02–9259, on page 18931, in the second column, add the following paragraph after the first full paragraph.

The Establishment Clause of the First Amendment of the United States Constitution prohibits the government from directly funding religious activity. These grants may not be used for instruction in religion or sacred literature, worship, prayer, proselytizing or other inherently religious practices. The services provided under these grants must be secular and non-ideological. Grant or sub-grant recipients, therefore, may not and will not be defined by reference to religion. Neutral, secular criteria that neither favor nor disfavor religion must be employed in their selection. In addition, under the WIA and DOL regulations implementing the Workforce Investment Act, a recipient may not employ or train a participant in sectarian activities, or permit participants to construct, operate, or maintain any part of a facility that is primarily used or devoted to sectarian instruction or worship. Under WIA, no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.

Signed at Washington, DC, this 8th day of May, 2002,

**James W. Stockton,**

*Grant Officer,*

[FR Doc. 02–11884 Filed 5–9–02; 8:45 am]

**BILLING CODE 4510–30–M**

## DEPARTMENT OF LABOR

### Employment Standards Administration

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration, Wage and Hour Division (WHD) is soliciting comments concerning the following proposed collection: Housing Terms and Conditions. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before July 12, 2002.

**ADDRESSES:** Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, EMail *pforkel@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or EMail).

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Wage and Hour Division (WHD) administers the Migrant and Seasonal Agricultural Protection Act (MSPA). Section 201(c) of MSPA, 29 U.S.C. 1801 *et seq.*, requires that any farm labor contractor, agricultural employer or agricultural association that provides housing to any migrant agricultural worker, post in a conspicuous place or present to such worker a statement of

the terms and conditions, if any, of occupancy of such housing. In addition, section 201(g) requires that such information be provided in English, or as necessary and reasonable, in a language common to the workers and that the Department of Labor make forms available to provide such information. Section 500.75(f) and (g) of Regulations, 29 CFR Part 500, of MSPA, sets forth the terms of occupancy of housing which are to be posted or given in a written statement to the worker. Section 500.1(i)(2) provides for optional Form WH–521, which may be used to satisfy sections 201(c) and 201(g) of MSPA. Optional Form WH–521 is printed in English/Spanish. Form WH–521 in other languages is not available at this time. The information collection is currently approved by the Office of Management and Budget (OMB) for use through September 2002.

**II. Review Focus**

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**III. Current Actions**

The Department of Labor seeks an extension of approval of optional Form WH–521, which may be used to satisfy sections 201(c) and 201(g) of MSPA. Form WH–521 is an optional form which a farm labor contractor, agricultural employer, and agricultural association can post or present to a migrant agricultural worker listing the terms and conditions for occupancy of housing. While use of the form is optional, disclosure of the information is required by MSPA. The optional form completed by the employer provides an easy method for the employer to satisfy the disclosure requirements. Completion of the form and disclosure also provides the migrant agricultural workers with information enabling them to understand the conditions under which they may occupy housing provided by farm labor contractors, agricultural employers or agricultural associations. There are no changes to this form since the last OMB approval.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Titles:* Housing Terms and Conditions.

*OMB Number:* 1215–0146.

*Agency Numbers:* Not Applicable.

*Affected Public:* Businesses or other for-profit; individuals or households; Farms.

*Total Respondents/Responses:* 1,300.

*Total Hours:* 650.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operation/maintenance):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 7, 2002.

**Margaret J. Sherrill,**

*Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. 02–11879 Filed 5–10–02; 8:45 am]

**BILLING CODE 4510–27–P**

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## DEPARTMENT OF LABOR

### Employment Standards Administration

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration, Office of Labor-Management Standards, is soliciting comments concerning the proposed information collection entitled Labor Organization and Auxiliary Reports. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before July 12, 2002.

**ADDRESSES:** Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, EMail pforkel@fenix2.dol-esa.gov. Please use only one method of transmission for comments (mail, fax, or EMail).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Congress enacted the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. 401 *et seq.,* to provide for the disclosure of information on the financial transactions and administrative practices of labor organizations. The statute also provides, under certain circumstances, for reporting by labor organization officers and employees, employers, labor relations consultants, and surety companies. In addition, the statute requires: (a) the maintenance and retention of supporting records for five years after the required reports are filed, and (b) the preservation for one year of records of elections of union officers. Section 208 of the Act authorizes the Secretary to issue rules and regulations prescribing the form of the required reports. The reporting provisions were devised to implement a basic tenet of the LMRDA: the guarantee of democratic procedures and safeguards within labor organizations that are designed to protect the basic rights of union members. The implementing regulations specifically incorporate by reference the LMRDA reporting and record retention requirements of labor organization information, annual financial, and trusteeship reports, as well as the requirement for the preservation of election records. Information supplied on the reports may be utilized by union members to help self-govern their unions, by the general public, and as research material for both outside researchers and within the Department of Labor. The information is also used to assist DOL and other government agencies in detecting

improper practices on the part of labor organizations, their officers and/or representatives, and is used by Congress in oversight and legislative functions. The information collection is currently approved by the Office of Management and Budget (OMB) for use through November 2002. The following is a list of the reporting forms contained in this information collection and their regulatory and legislative citations: LM–1, Labor Organization Information Report, 29 CFR 402, 29 U.S.C. 431(a); LM–2, Labor Organization Annual Report, 29 CFR 402.5 and 403.3; 29 U.S.C. 431(b); LM–3, Labor Organization Annual Report, 29 CFR 402.5 and 403.4; 29 U.S.C. 431(b); LM–4, Labor Organization Annual Report, 29 CFR 402.5 and 403.4; 29 U.S.C. 431(b); LM–10, Employer Report, 29 CFR Part 405, 29 U.S.C. 433(a); LM–15, Trusteeship Report, 29 CFR Part 408, 29 U.S.C. 461; LM–15A, Report on Selection of Delegates and Officers, 29 CFR Part 408, 29 U.S.C. 461; LM–16, Terminal Trusteeship Report, 29 CFR Part 408, 29 U.S.C. 461; LM–20, Agreement and Activities Report, 29 CFR Part 406, 29 U.S.C. 433(b); LM–21, Receipts and Disbursements Report, 29 CFR Part 406, 29 U.S.C. 433(b); LM–30, Labor Organization Officer and Employee Report, 29 CFR Part 404, 29 U.S.C. 432; S–1, Surety Company Annual Report, 29 CFR Part 409, 29 U.S.C. 441; Simplified Annual Report Format, 29 CFR Part 403, 29 U.S.C. 431(b).

## II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

## III. Current Actions

Pursuant to § 205 of the LMRDA, the purpose of the reporting requirements is the public disclosure of the information and financial reports. Copies of every report submitted are maintained for public inspection and copying, upon request, at the U.S. Department of Labor, Room N5608, 200 Constitution Avenue, NW., Washington, DC 20210, and at the appropriate field office for the Department's Office of Labor-Management Standards (OLMS). Information supplied on the reports may be utilized by union members to help self-govern their unions, by the general public, and as research material for both outside researchers and within the Department of Labor. The information is also used to assist DOL and other government agencies in detecting improper practices on the part of labor organizations, their officers and/or representatives, and is used by Congress in oversight and legislative functions. Under this request, the Department of Labor is seeking extension of the approved expiration date of the forms described above for a three year period.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Titles:* Labor Organization Information Report (LM–1); Labor Organization Annual Report (LM–2); Labor Organization Annual Report (LM–3); Labor Organization Annual Report (LM–4); Employer Report (LM–10); Trusteeship Report (LM–15); Report on Selection of Delegates and Officers (LM–15A); Terminal Trusteeship Report (LM–16); Agreement and Activities Report (LM–20); Receipts and Disbursements Report (LM–21); Labor Organization Officer and Employee Report (LM–30); Surety Company Annual Report (S–1); and the Simplified Annual Report Format.

*OMB Number:* 1215–0188.

*Affected Public:* Not-for-profit institutions, Businesses or other for-profit; Individuals or households.

| Form | Responses/respondents | Hours per respondent | Reporting burden hours | Minutes per respondent | Recordkeeping hours | Total hours |
|---|---|---|---|---|---|---|
| LM–1 | 253 | 0.83 | 210 | 5 | 21 | 231 |
| LM–2 | 5,932 | 14.75 | 87,497 | 30 | 2,966 | 90,463 |
| LM–3 | 12,722 | 6.50 | 82,693 | 15 | 3,181 | 85,874 |
| LM–4 | 8,108 | 0.83 | 6,730 | 2 | 270 | 7,000 |
| LM–10 | 116 | 0.50 | 58 | 5 | 10 | 68 |
| LM–15 | 427 | 1.50 | 641 | 20 | 142 | 783 |
| LM–15A | 71 | 0.33 | 23 | 2 | 2 | 25 |
| LM–16 | 110 | 0.33 | 36 | 1 | 2 | 38 |
| LM–20 | 231 | 0.33 | 76 | 2 | 8 | 84 |
| LM–21 | 36 | 0.50 | 18 | 5 | 3 | 21 |
| LM–30 | 139 | 0.50 | 70 | 5 | 12 | 82 |
| S–1 | 82 | 0.50 | 41 | 5 | 7 | 48 |
| SARF* | 2,142 | 0.17 | 364 | 2 | 71 | 435 |
| Total | 30,369 | ..... | 178,457 | 6,695 | 85,152 | |

*Simplified Annual Report Format.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operation/maintenance):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 6, 2002.

**Margaret J. Sherrill,**

*Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. 02–11880 Filed 5–10–02; 8:45 am]

**BILLING CODE 4510–CP–P**

## DEPARTMENT OF LABOR

## Employment Standards Administration

## Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration, Wage and Hour Division (WHD) is soliciting comments concerning the following proposed collection: Application of the Employee Polygraph Protection Act. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before July 12, 2002.

**ADDRESSES:** Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, EMail *pforkel@fenix2.dol-esa.gov.* Please use only one method of transmission for comments (mail, fax, or EMail).

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Wage and Hour Division (WHD) administers the Employee Polygraph Protection Act of 1988 (EPPA). The EPPA was signed into law June 27, 1988 and became effective December 27, 1988. EPPA prohibits most private employers from using any lie detector tests either for pre-employment screening or during the course of employment. Federal, State, and local government employers are exempted from the Act. The law contains several limited exemptions which authorize polygraph tests under certain conditions, including: (1) The testing of employees who are reasonably suspected of involvement in a workplace incident that results in economic loss or injury to the employer's business; (2) the testing by the Federal Government of experts, consultants, or employees of Federal contractors engaged in national security intelligence or counterintelligence functions; (3) the testing of some prospective employees of private armored car, security alarm, and security guard firms; and (4) the testing of some current and prospective employees in firms authorized to manufacture, distribute, or dispense controlled substances. Employers who violate any of the Act's provisions may be assessed civil money penalties up to $10,000. The information collection is currently approved by the Office of Management and Budget (OMB) for use through October 2002.

### II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

### III. Current Actions

The Department of Labor seeks an extension of approval of this information collection that requires the keeping of records necessary or appropriate for the administration of the Act in order to carry out its responsibility to determine if a beneficiary is capable and/or competent to manage his/her black lung benefits, and to assure that the representative payee is using the benefits to meet the beneficiary's needs. There is no change to these forms since the last OMB approval.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Titles:* Application of the Employee Polygraph Protection Act.

*OMB Number:* 1215–0170.

*Agency Numbers:* Not Applicable.

*Affected Public:* Businesses or other for-profit; individuals or households; Not-for-profit institutions; Farms.

*Total Respondents/Responses:* 328,000.

*Total Hours:* 82,406.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operation/maintenance):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 6, 2002.

**Margaret J. Sherrill,**

*Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. 02–11881 Filed 5–10–02; 8:45 am]

**BILLING CODE 4510–27–P**

## DEPARTMENT OF LABOR

## Employment Standards Administration

## Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the

Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration, Office of Workers' Compensation Programs (OWCP) is soliciting comments concerning the following proposed collection: Representative Payee Report (CM–623), Representative Payee Report, Short Form (CM–623S), and Physician's/Medical Officer's Report (CM–787). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before July 12, 2002.

**ADDRESSES:** Ms. Patricia A. Forkel, U. S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, EMail pforkel@fenix2.dol-esa.gov. Please use only one method of transmission for comments (mail, fax, or EMail).

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Office of Workers' Compensation Programs administers the Federal Black Lung Workers' Compensation Program. Under the Federal Mine Safety and Health Act (30 U.S.C. 901) benefits payable to a black lung beneficiary may be paid to a representative payee on behalf of the beneficiary when the beneficiary is unable to manage his/her benefits due to incapability, incompetence, or minority. The CM–623 is used to collect expenditure data regarding the disbursement of the beneficiary's benefits by the representative payee to assure that the beneficiary's needs are being met. The CM–623S is a shortened version of the CM–623 that is used when the representative payee is a family member. The CM–787 is a form used by OWCP to gather information from the beneficiary's physician about the capability of the beneficiary to manage monthly benefits. It is used by OWCP to determine if it is in the beneficiary's best interests to have his/her benefits managed by another party. Regulatory authority for the collection of this information is at 20 CFR 725.506, 510, 511, and 513. The information collection is currently approved by the Office of Management and Budget (OMB) for use through October 2002.

## II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

## III. Current Actions

The Department of Labor seeks an extension of approval to collect this information in order to carry out its responsibility to determine if a beneficiary is capable and/or competent to manage his/her black lung benefits, and to assure that the representative payee is using the benefits to meet the beneficiary's needs. There is no change to these forms since the last OMB approval.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Titles:* Representative Payee Report; Representative Payee Report, Short Form; Physician's Medical Officer's Statement.

*OMB Number:* 1215–0173.

*Agency Numbers:* CM–623, CM–623S, CM–787.

*Affected Public:* Businesses or other for-profit; individuals or households; Not-for-profit institutions.

| Form | Respondents/ responses | Frequency | Average response time | Total hours |
|---|---|---|---|---|
| CM–623 | 2,275 | Annually | 90 | 3,413 |
| CM–623S | 600 | Annually | 10 | 100 |
| CM–787 | 223 | On occasion | 15 | 56 |

*Total Respondents/Responses:* 3,098.

*Total Hours:* 3,569.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operation/ maintenance):* $1,064.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 6, 2002.

**Margaret J. Sherrill,**

*Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. 02–11882 Filed 5–10–02; 8:45 am]

**BILLING CODE 4510–CH–P**

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 66 FR 57113 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget

(OMB) for clearance simultaneously with the publication of this second notice.

**DATES:** Comments regarding this information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

**ADDRESSES:** Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of ifnromation on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Copies of the submission may be obtained by calling (703) 292–7556.

**FOR FURTHER INFORMATION CONTACT:** Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov.*

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* The National Science Foundation's Graduate Research Traineeship Program's Follow Up Study.

*OMB Control No.:* 3145–NEW.

*Abstract:* This document has been prepared to support the clearance of data collection instruments to be used in the follow up study of the National Science Foundation's (NSF) Graduate Research Traineeship (GRT) Program. GRT supported graduate students in peer-review selected institutions to achieve a doctorate (PhD) in critical or emerging areas of science, mathematics, and engineering. The study addresses the following questions: What positions do graduates obtain following completion of the doctorate? What academic awards or private/public sector attainments do graduates receive? What impacts do traineeships have on the sponsoring institution, faculty, and colleagues? How do GRT trainees who stopped their pursuit of a PhD characterize their GRT experience? Is there a relationship between the average time of GRT funding support for a trainee and the average number of years required for completing a PhD? Despite not completing the doctorate, did former GRT recipients find the traineeship relevant to their subsequent employment or study related to science and technology needs in priority fields? What is the overall ''value added'' of traineeships?

The data to address these questions will be gathered via two survey instruments. The first instrument is an Institutional Impact Survey that GRT project Principal Investigators (PI) will complete 2 years after their final year of funding. The second instrument is an individual survey that all trainees who have received doctorates or withdrawn from the GRT program will be asked to complete.

2. *Expected Respondents:* The expected respondents are the Principal Investigators and GRT funding recipients (trainees) from GRT projects funded by NSF since 1993.

3. *Burden on the Public:* The total annual burden hours for this collection are 290 for a maximum of 373 respondents, assuming an 80–100% response rate. The average annual reporting burden is one hour or less per respondent. The burden on the public is limited because the study is limited to GRT project participants and no other individuals.

Dated: May 8, 2002.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 02–11912 Filed 5–10–02; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 66 FR 65748 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

**DATES:** Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

**ADDRESSES:** Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Copies of the submission may be obtained by calling (703) 292–7556.

**FOR FURTHER INFORMATION CONTACT:** Suzanne H. Plimpton, NSF Reports Clearance Office at (703) 292–7556 or send e-mail to *splimpto@nsf.gov*.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* The Evaluation of the Preparing Future Faculty (PFF) Program.

*OMB Control No.:* 3145–NEW.

*Abstract:* This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the Preparing Future Faculty (PFF) Program, funded since 1993 by The PEW Charitable Trust, the National Science Foundation, and an anonymous donor. PFF is designed to change the culture of graduate education in order to produce faculty for colleges and universities who are fully prepared for teaching and service responsibilities as well as the research role.

Data will be collected using Web-based surveys and conducting institutional site visits for six selected case studies. Titles of the survey instruments and interview protocol for the PFF Evaluation are as follows:

- PFF Partner Faculty Survey
- PFF Graduate Faculty Survey
- PFF Participant Survey (Graduate Students)
- PFF Site Visit Protocol (for case studies)

NSF will use this collection to evaluate the impact and effectiveness of the Preparing Future Faculty Program on graduate education and the development of future professors.

2. *Expected Respondents:* The expected respondents are project directors, deans, and graduate student participants at PFF grantee institutions as well as faculty associated directly with the PFF program at both graduate institutions and partner institutions.

3. *Burden on the Public:* The remaining elements for this collection represent 734 burden hours for a maximum of 3840 participants over two years, assuming an 80–100% response rate. The burden on the public is negligible; the study is limited to project participants that have directly received funding from or otherwise have benefited from participation in the PFF program.

Dated: May 7, 2002.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 02–11913 Filed 5–10–02; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 2914 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

**DATES:** Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

**ADDRESSES:** Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, N.W. Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Copies of the submission may be obtained by calling (703) 292–7556.

**FOR FURTHER INFORMATION CONTACT:** Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov.*

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Cross-Project Evaluation of the National Science Foundation's Local Systemic Change through Teacher Enhancement Program (LSC).

*OMB Control No.:* 3145–0161.

*Abstract:* The National Science Foundation (NSF) requests an extension of approval of instruments to be used in the evaluation of the Local Systemic Change (LSC) through Teacher Enhancement Program that were previously approved through May 2002 (OMB No. 3145–0136). The surveys are part of the ongoing data collection for the program-wide evaluation of the LSC. Each of the 72 currently funded projects administers teacher and principal questionnaires and conducts teacher interviews at appropriate times during the school year based on the program evaluation design.

These surveys have been ongoing for a number of years in LSC projects funded by NSF. The LSC program is a large-scale effort to modify the nature of teacher in-service training (or professional development) provided to mathematics and science teachers in a large number of school districts across the country. Currently there are 72 projects funded at up to $6 million each. The database maintained by Horizon Research, Inc. for LSC is designed to provide information on the total system, both for accountability and for judging effectiveness. For example, NSF is required to report for GPRA the number of teachers receiving NSF in-service and development support. This information is gathered through this recurring study of the LSC projects.

*Expected Respondents:* A total of 150 teachers and 55 principals from schools in each of the 72 LSC projects, for a total of 10,800 teachers and 3,960 principals participating in the LSC program.

*Burden On The Public:* 3,960 hours for teachers and 990 hours for principals per year.

Dated: May 8, 2002.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 02–11914 Filed 5–10–02; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 030–19135; License No. 29–19707–01; EA No. 01–314]**

## In the Matter of Trap Rock Industries, Kingston, New Jersey; Order Imposing a Civil Monetary Penalty

**I**

Trap Rock Industries (Licensee) is the holder of Byproduct Materials License No. 29–19707–01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) on July 24, 1991. The License was most recently renewed by the Commission on September 22, 1994. The License authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein at their facility in Kingston, New Jersey and at various temporary job sites.

**II**

An inspection of the Licensee's activities was conducted on December 6, 2001, at the Licensee's facility located in Kingston, New Jersey. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated February 27, 2002. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for one of the violations.

The Licensee responded to the Notice in a letter, dated March 26, 2002. In its response, the Licensee does not deny that the violations occurred as stated in the Notice, but requests withdrawal of the penalty.

**III**

After consideration of the Licensee's response and the statements of fact, explanation, and argument contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that an adequate basis was not provided for withdrawal of the penalty and that a penalty of $3,000 should be imposed.

**IV**

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $3,000 within 30 days of the date of this Order, in accordance with NUREG/BR–0254. In addition, at the time of making the payment, the Licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

**V**

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be addressed to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Associate General Counsel for Hearings, Enforcement & Administration at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

Whether on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland, this 30th day of April, 2002.

For the Nuclear Regulatory Commission.

**Frank J. Congel,**

*Director, Office of Enforcement.*

## Appendix

### Evaluations and Conclusion

On February 27, 2002, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for two violations identified during a NRC inspection conducted at the Licensee's facility located in Kingston, New Jersey, as well as temporary job sites in Ewing, New Jersey. The penalty was issued for one violation. The Licensee responded to the Notice in a letter, dated March 26, 2002. While in its response, the Licensee does not deny that the violations occurred as stated in the Notice, the Licensee does request withdrawal of the civil penalty. The NRC's evaluation and conclusion regarding the Licensee's request is as follows:

*1. Restatement of Violation Assessed a Civil Penalty*

10 CFR 20.1801 requires that the Licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the Licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *controlled area* means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the Licensee for any reason; and *unrestricted area* means an area, access to which is neither limited nor controlled by the Licensee.

Contrary to the above, on October 24, 2001, the Licensee did not secure from unauthorized removal or limit access to a Troxler Model 4640–B density gauge (containing one 8-millicurie cesium-137 source) located at a temporary job site on Route 31 in Ewing, New Jersey, which is an unrestricted area, nor did the Licensee control and maintain constant surveillance of this licensed material.

*2. Summary of Licensee's Request for Withdrawal of the Civil Penalty*

The Licensee, in its response, requests that the civil penalty be withdrawn. In support of this request, the Licensee contends that (1) the violation should be considered minor; and (2) extenuating circumstances exist that should eliminate the need for a civil penalty.

With respect to the significance of the violation, the Licensee indicates that there was no actual safety significance to the violation; the potential consequences were de minimus; the loss of the gauge did not impact the NRC's ability to perform its regulatory functions; and the loss of the gauge was not willful. The Licensee also states that using the standards set forth in the enforcement policy for assigning severity, the violation, ''at best,'' should be classified at Severity Level III. However, the Licensee also argues that using the guidance set forth in Section E of Supplement IV of the enforcement policy, the violation could be considered minor because the amount of radioactivity that could be given off by this 8 millicurie cesium-137 gauge was approximately that of an x-ray.

With respect to the extenuating circumstances, the Licensee argues that the penalty should be withdrawn because the gauge contained minuscule quantities of material, was clearly and properly labeled, and was lost due to a criminal act of an unknown third party; upon discovery that the gauge was missing, the Licensee immediately notified the NRC of the theft and attempted to find the stolen gauge; the Licensee disciplined the employee who left the gauge unattended, and also took

corrective actions that included re-instructing and re-training its employees; and the Licensee has had no prior violations of NRC regulations.

The Licensee also argues that none of the rationales set forth in the enforcement policy for issuing a penalty are applicable in this case. Specifically, the Licensee indicates that the penalty will not encourage prompt identification and prompt corrective action because the Licensee had already identified and corrected the violations. The Licensee also states that the penalty will not deter future violations because the theft of the radioactive device was the result of a criminal act by a third party. Finally, the Licensee maintains that the penalty will not focus the Licensee's attention on significant violations because the Licensee believes that the violation was insignificant.

*3. NRC Evaluation of Licensee's Request for Withdrawal of the Civil Penalty*

Notwithstanding the Licensee's contentions regarding the significance of the violation, the NRC maintains that the violation was appropriately classified at Severity Level III, consistent with the NRC enforcement policy. Since the gauge contained less than 1000 times the quantity of cesium-137 set forth in 10 CFR Part 20, Appendix C (the gauge contained approximately 800 times that quantity), the failure to secure the gauge and maintain surveillance over it might have been classified at Severity Level IV, in accordance with Section C.11 of Supplement IV of the enforcement policy, had the gauge not been stolen. However, since the failure to secure or maintain constant surveillance over the gauge, resulted in the gauge being stolen and radioactive material entering the public domain and being handled by members of the public, the violation is more appropriately classified at Severity Level III. Such violations are considered significant since, although the source is normally shielded within the gauge, significant radiation exposures could occur if the source becomes unshielded while in the public domain.

The NRC agrees that the gauge was properly labeled, the Licensee took appropriate actions once it discovered that the gauge was missing, the violation was not willful, and the Licensee's prior enforcement history has been good. As a result, consistent with the NRC enforcement policy, a civil penalty would not normally be warranted for a Severity Level III violation, as the NRC indicated in its February 27, 2002 letter transmitting the civil penalty. However, although the outcome of the normal civil penalty process in this case would not result in a civil penalty, a civil penalty is warranted, in accordance with Section VII.A.1.g of the enforcement policy since the case involved a loss/improper disposal of a sealed source. The Commission included Section VII.A.1.g. in the policy since it believes that normally issuance of a civil penalty is appropriate for cases involving of loss of a sealed source or device. This is necessary to properly reflect the significance of such violations.

Although the loss of the gauge was due to the criminal act of a third party, the Licensee is responsible for that occurrence since the gauge user left the gauge unattended and unsecured, which directly contributed to the theft. Accordingly, issuance of the violation, categorization of the violation at Severity Level III, and imposition of the related civil penalty, is appropriate in this case, and consistent with the NRC enforcement policy.

*4. NRC Conclusion*

The NRC has concluded that the Licensee did not provide an adequate basis for withdrawal of the civil penalty. Accordingly, the proposed civil penalty in the amount of $3,000 should be imposed.

[FR Doc. 02–11872 Filed 5–10–02; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Materials and Metallurgy, on Thermal-Hydraulic Phenomena, and on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittees on Materials and Metallurgy, on Thermal-Hydraulic Phenomena, and on Reliability and Probabilistic Risk Assessment will hold a joint meeting on May 31, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Friday, May 31, 2002—8:30 a.m. until the conclusion of business.*

The Subcommittees will continue their review of the proposed risk-informed revisions to the technical requirements of the Emergency Core Cooling Systems Rule (10 CFR 50.46 and Appendix K). The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the Designated Federal Official, Mr. Paul A. Boehnert (telephone 301–415–8065) between 7:30 a.m. and 5 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda that may have occurred.

Dated: May 7, 2002.

**Sher Bahadur,**

*Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 02–11870 Filed 5–10–02; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified by its task number, DG–1118, which should be mentioned in all correspondence concerning this draft guide. Draft Regulatory Guide DG–1118, the Proposed Revision 1 of Regulatory Guide 1.53, ''Application of the Single-Failure Criterion to Safety Systems,'' is being developed to describe a method acceptable to the NRC staff for complying with the NRC's regulations with respect to satisfying the single-failure criterion for safety systems.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted by mail to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555; or they may be hand-delivered to the Rules and Directives Branch, ADM, at 11555 Rockville Pike, Rockville, MD. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by July 15, 2002.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC home page (*http://www.nrc.gov*). This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV*. For information about Draft Regulatory Guide DG–1118, contact Mr. S.K. Aggarwal at (301) 415–6005, e-mail <*SKA@NRC.GOV*>.

Although a time limit is given for comments on these draft guides, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; email PDR@NRC.GOV . Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to <*DISTRIBUTION@NRC.GOV*>; or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 1st day of May, 2002.

For the Nuclear Regulatory Commission.

**Michael E. Mayfield,**

*Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.*

[FR Doc. 02–11873 Filed 5–10–02; 8:45 am]

**BILLING CODE 7590–01–P**

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Sunshine Act Meeting; May 22, 2002, Board of Directors Meeting

**TIME AND DATE:** Wednesday, May 22, 2002, 1:30 p.m. (OPEN Portion), 1:45 p.m. (CLOSED Portion).

**PLACE:** Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

**STATUS:** Meeting OPEN to the Public from 1:30 p.m. to 1:45 p.m., Closed portion will commence at 1:45 p.m. (approx).

**MATTERS TO BE CONSIDERED:**

1. President's Report
2. Approval of January 31, 2002 Minutes (Open Portion)

**FURTHER MATTERS TO BE CONSIDERED:**

(Closed to the Public 1:45 p.m.)

1. Finance Project in South America
2. Finance Project in Pakistan
3. Finance Project—Global
4. Insurance Project in Chad
5. Insurance Project in the Philippines
6. Approval of January 31, 2002 Minutes (Closed Portion)
7. Pending Major Projects
8. Reports

**CONTACT PERSON FOR INFORMATION:** Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: May 9, 2002.

**Connie M. Downs,**

*Corporate Secretary, Overseas Private Investment Corporation.*

[FR Doc. 02–11962 Filed 5–9–02; 10:34 am]

**BILLING CODE 3210–01–M**

## PRESIDIO TRUST

### The Presidio of San Francisco, California; Notice of Availability of the Presidio Trust Management Plan and Final Environmental Impact Statement

**AGENCY:** The Presidio Trust.

**ACTION:** Notice of availability of the Presidio Trust Management Plan (PTMP): Land Use Policies for Area B of The Presidio of San Francisco and associated Final Environmental Impact Statement (EIS). The PTMP (formerly known as the Presidio Trust Implementation Plan or PTIP) is an update to the July 1994 Final General Management Plan Amendment (GMPA) for the portion of The Presidio of San Francisco (Presidio) now under the Presidio Trust's (Trust's) jurisdiction (Area B). The PTMP EIS supplements the GMPA Environmental Impact Statement adopted by the National Park Service (NPS) for the Presidio in 1994.

*Contents of Final EIS:* Volume I of the Final EIS contains the text of the Final EIS with a summary of changes made in response to comments on the Draft EIS. Major impact topics assessed in Volume I include historic resources, cultural landscape, archaeology, biological resources, water resources, visual resources, air quality, noise, land use, socioeconomic issues, visitor experience, recreation, public safety, transportation, water supply, utilities and Trust operations. Volume II contains a summary of the public and agency comments received on the Draft EIS, along with written responses to those comments. Volume III contains technical appendices related to the EIS analyses.

*Background:* The Trust has prepared a Final EIS in compliance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality's implementing regulations at 40 CFR Parts 1500–1508, and the Trust's supplemental implementing regulations in 36 CFR Part 1010. The Final EIS describes and analyzes a proposed action (Final Plan), a variant of the Final Plan alternative, and five additional alternatives to address Presidio Trust Act (Trust Act) requirements, changed conditions since the GMPA was adopted, new policies and management approaches of the Trust, and public comment on the Draft Plan and Draft EIS. The Draft Plan and EIS were circulated for public and agency review from July 25, 2001 to October 25, 2001, a period of about 90 days. During this period, the Trust received over 3,000 comment letters, as well as oral comments provided at two public hearings and at a public meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Citizens' Advisory Commission. The Trust carefully considered public comments, and made modifications to the text of the Draft Plan and EIS. Modifications included re-naming and substantially revising the text of the Draft Plan, along with inclusion of the Final Plan variant in the EIS and other modest adjustments to the text and analysis of the EIS. Original comment letters and transcripts are available for review in the Trust library, 34 Graham Street, in the Presidio.

Under the Trust Act, as amended, Congress created the Trust to manage Area B so as to make it financially self-sufficient by year 2013 and to protect Area B's resources by ensuring long-term financial sustainability. Each of the alternatives summarized below and presented in the Final EIS achieves Trust Act goals to varying degrees and has a different emphasis. Principal differences among alternatives include the proposed total building square footage, the proposed amount of non-residential and residential uses, the amount of open space, the proposed plan vision and method of delivery of public programs. The maximum overall square footage of 5,960,000 allowed under the Trust Act would not be exceeded under any alternative.

*GMPA 2000 Alternative*—The GMPA 2000 or ''no action'' alternative would implement the 1994 GMPA assuming current (year 2000) conditions. Buildings would be removed to increase open space and enhance natural resources, and available housing would decrease substantially. Tenants with a mission related to environmental, social or cultural concerns would offer public programs related to their business mission.

*Final Plan Alternative*—Under the Final Plan or the Trust's ''preferred'' alternative, the Trust would preserve and enhance the park resources for public use. Housing units would be removed to increase open space and would be replaced through a combination of subdivision, conversion and possible new construction. The Trust would collaborate with partners, including the NPS, tenants and residents, to provide park programs. A broader mix of tenants would be permitted than under the GMPA 2000 alternative to meet the policy goals of the Plan.

*Final Plan Variant*—The Final Plan variant is consistent with a detailed Sierra Club proposal. Its land use proposals are similar to the Final Plan alternative, except for greater building demolition and therefore less total built space as well as a prohibition on replacing demolished structures through new construction. The Final Plan variant emphasizes the replacement of removed housing units by converting existing buildings.

*Resource Consolidation Alternative*—Under the Resource Consolidation alternative, the Presidio would become an enhanced open space haven in the center of urban surroundings by maximizing open space in the southern part of the park through the removal of historic and non-historic structures, and concentrating built space in the northern part of the park. Open space and natural resource enhancements would be maximized.

*Sustainable Community Alternative*—Under the Sustainable Community alternative, the Presidio would become a sustainable live/work community in a park setting with a small decrease in housing units, would retain its present dispersed pattern of development, and would emphasize building reuse and rehabilitation.

*Cultural Destination Alternative*—Under the Cultural Destination alternative, the Presidio would become a national and international destination park by providing robust public programming delivered through the Trust. A substantial level of building demolition in the southern part of the park would be replaced in the northern part of the park to provide an increase in and improved mix of housing, and to cluster housing near work and transit.

*Minimum Management Alternative*—Under the Minimum Management alternative, there would be no significant physical change beyond that already underway, and the Presidio would be minimally managed to meet legal requirements.

*Materials Available to the Public:* Copies of the PTMP and Final EIS will be available at the public meeting of the Trust Board of Directors on May 21, 2002, and will be available thereafter by calling or writing the Presidio Trust, 34 Graham Street, Post Office Box 29052, San Francisco, CA 94129–0052. Telephone: 415/561–5414. The complete PTMP and Final EIS will be available electronically on the Trust's website (*www.presidiotrust.gov*) and on CD–ROM after May 21, 2002. The PTMP and Final EIS may also be reviewed after May 21, 2002, in the Trust's library at the above address or in local libraries.

*Public Meeting:* As previously announced on April 26, 2002 (67 FR 20846), information on the PTMP and Final EIS will be presented at the public meeting of the Trust Board of Directors on May 21, 2002, at the Officers' Club, 50 Moraga Avenue at Arguello Boulevard (Main Post), Presidio of San Francisco, California, from 6 p.m. to 9 p.m.

*Limitation on Action:* Following distribution of the Final EIS, and following the 30-day ''no action'' period required under the NEPA, the Trust Board of Directors will consider adoption of the Final Plan. The Board's action could include, but is not limited to, adoption of the preferred alternative (the Final Plan), rejection of all alternatives, and/or partial or conditional approval of a particular alternative. The Board's action, through a Record of Decision, will describe the scope and basis of the decision, the mitigations or conditions upon which it is contingent, and how the Final EIS will be used in subsequent decision-making.

**FOR FURTHER INFORMATION CONTACT:** John Pelka, NEPA Compliance Manager, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415/561–5414.

Dated: May 7, 2002.

**Karen A. Cook,**

*General Counsel.*

[FR Doc. 02–11831 Filed 5–10–02; 8:45 am]

**BILLING CODE 4310–4R–P**

## RAILROAD RETIREMENT BOARD

### Sunshine Act Meeting; Notice of Public Hearing

Notice is hereby given that the Railroad Retirement Board, acting through its appointed Hearing Examiner, will hold a hearing on May 21, 2002, at 9 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The hearing will be at the request of American Orient Express Railway Company LLC for the purpose of taking evidence relating to the status of the company as an employer covered by the Railroad Retirement and Railroad Unemployment Insurance Acts.

The entire hearing will be open to the public. The person to contact for more information is Karl Blank, Hearing Examiner, phone number (312) 751–4941, TDD (312) 751–4701.

Dated: May 7, 2002.

**Beatrice Ezerski,**

*Secretary to the Board*

[FR Doc. 02–11961 Filed 5–9–02; 10:34 am]

**BILLING CODE 7905–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45843A; File No. S7–12–02]**

### Draft Data Quality Assurance Guidelines; Correction

In FR Document No. 02–10931 on page 21785 for Wednesday, May 1, 2002, make the following correction:

In the third column, remove ''By the Commission.'' before the date line.

Dated: May 7, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–11810 Filed 5–10–02; 8:45 am]

**BILLING CODE 8010–01–U**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45887; File No. SR–NFA–2002–03]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Futures Association Regarding Futures Commission Merchants and Introducing Brokers Anti-Money Laundering Program

May 7, 2002.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on April 25, 2002, National Futures Association (''NFA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule changes described in Items I, II, and III below, which Items have been prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

On April 22, 2002, NFA submitted the proposed rule change to the Commodities Futures Trading Commission (''CFTC'') for approval. The CFTC approved the proposed rule change on April 23, 2002.[3]

### I. Self-Regulatory Organization's Description of the Proposed Rule Change

Section 15A(k) of the Exchange Act [4] makes NFA a national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act.[5] NFA Compliance Rule 2–9 and the Interpretive Notice Regarding Futures Commission Merchants (''FCM'') and Introducing Brokers (''IB'') Anti-Money Laundering Program (''Notice'') apply to all Members who open and accept orders for futures accounts, regardless of the underlying product and, therefore, will apply to Members registered under Section 15(b)(11) with regard to their security futures activities.

The proposed rule change responds to the CFTC's request that NFA adopt minimum standards for anti-money laundering programs applicable to the futures industry. Section 352 of the *International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001* (''Title III'') requires financial institutions, as defined under the Bank Secrecy Act (''BSA''), to implement an anti-money laundering program which, at a minimum, must include internal policies, procedures and controls to deter, detect and report suspicious activity; a designated compliance officer to oversee anti-money laundering surveillance; an ongoing training program for employees; and an independent audit function to test the compliance of the program. NFA Compliance Rule 2–9 and the Interpretive Notice Regarding FCM and IB Anti-Money Laundering Program implement this requirement.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below. The text of the proposed rule change is available for inspection at the Office of the Secretary, the NFA, the Commission's Public Reference Room, and on the Commission's website (*http://www.sec.gov*).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

As noted above, the proposed rule change responds to the CFTC's request that NFA adopt minimum standards for anti-money laundering programs applicable to the futures industry. Section 352 of the *International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001* (''Title III'') requires financial institutions, as defined under the Bank Secrecy Act (''BSA''), to implement an anti-money laundering program which, at a minimum, must include internal policies, procedures and controls to deter, detect and report suspicious activity; a designated compliance officer to oversee anti-money laundering surveillance; an ongoing training program for employees; and an independent audit function to test the compliance of the program.

Although the BSA explicitly defines ''financial institutions'' to include FCMs, Commodity Pool Operators (''CPOs'') and Commodity Trading Advisors (''CTAs'') (but not IBs), the U.S. Department of the Treasury (''Treasury'') has requested that NFA's anti-money laundering program requirements apply to IBs. Treasury notes that it intends to clarify that IBs are within the BSA's definition of ''financial institutions'' in the near future. In Treasury's view, this amendment is necessary so that Title III's requirements apply to FCMs and IBs in a manner comparable to clearing and introducing broker-dealers in the securities industry.

The proposed Notice makes clear that FCMs and IBs must adopt an anti-money laundering compliance program. The Notice allows FCMs and IBs to allocate their responsibilities by written agreement, but indicates that both parties must have a reasonable basis for believing that the other party is performing their required functions. The Notice also highlights that the Secretary of the Treasury has stated that allocating these responsibilities does not relieve either the FCM or the IB of its independent obligation to comply with the anti-money laundering requirements.

The proposed Notice is divided into four main areas that track the requirements of Section 352. The first section discusses the types of policies, procedures, and internal controls that FCMs and IBs should include in their anti-money laundering program. Specifically, the Notice discusses procedures for obtaining and verifying the true identity of the owner/beneficial owner of an account. The Notice also describes various relationships between carrying FCMs and IBs and other entities and discusses the FCM's and IB's responsibilities when other entities are involved. In particular, the Notice states that when an FCM or IB is doing business with a CPO, the FCM or IB will be required to conduct a risk-based analysis of the money laundering risks posed by the pool and, in most instances, this analysis will not require the FCM or IB to conduct due diligence on the underlying participants or beneficiaries. With regard to the treatment of accounts introduced by regulated foreign intermediaries, the proposed Notice requires an FCM to make a risk-based determination as to whether it can rely on the foreign

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] Letter from Catherine D. Dixon, Assistant Secretary of the Commission, CFTC, to Thomas W. Sexton, Vice President and General Counsel, NFA, dated April 23, 2002.

[4] 15 U.S.C. 78o–3(k)

[5] 15 U.S.C. 78o(b)(11).

intermediary's due diligence with respect to its customers. The Notice also identifies certain factors to consider including whether the intermediary, is located in a FATF member jurisdiction, the FCM's historical experience with the foreign intermediary and the intermediary's reputation in the investment business.

The first section of the Notice also describes procedures for detecting and reporting suspicious activity, hiring qualified staff in areas susceptible to money laundering, and record keeping requirements. The second section of the Notice discusses the requirement that the firm designate an individual or individuals to oversee the surveillance program. This section also highlights the main responsibilities of this individual. The third section discusses the components of an employee training program. Finally, the last section discusses the independent audit review function and the ways a firm can satisfy this requirement.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Exchange Act.[6]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act and the CEA. Any burdens imposed are necessary and appropriate in order to protect customers.

*C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others*

NFA worked with industry representatives in developing the rule changes. NFA did not, however, publish the rule changes to the membership for comment. NFA did not receive comment letters concerning the rule changes.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

By law, financial institutions must be in compliance with the requirements of Section 352 of Title III on or before April 24, 2002.

The proposed rule change became effective on April 23, 2002. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[7]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* 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 these filings also will be available for inspection and copying at the principal office of NFA. Electronically submitted comments will be posted on the Commission's website (http://www.sec.gov). All submissions should refer to File No. SR–NFA–2002–03 and should be submitted by June 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[6] 15 U.S.C. 78o–3(k).

[7] 15 U.S.C. 78s(b)(1).

[8] 17 CFR 200.30–3(a)(75).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45884; File No. SR–NYSE–2002–17]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. to Extend Pilot Relating to Its Allocation Policy for Trading of Exchange-Traded Funds Traded on an Unlisted Trading Privileges Basis

May 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 6, 2002, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The proposed rule change has been filed by the NYSE as a ''non-controversial'' rule change under Rule 19b–4(f)(6) of the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change seeks to extend the pilot relating to the Exchange's policy for allocating Exchange-Traded Funds (''ETFs'') admitted to trading on the Exchange on an Unlisted Trading Privileges Basis (''UTP'') for an additional year. The pilot is set to expire on May 7, 2002. For purposes of the Allocation Policy, ETFs include both Investment Company Units (as defined in paragraph 703.16 of the NYSE Listed Company Manual) and Trust Issued Receipts (as defined in NYSE Rule 1200), which trade UTP.

Since the inception of the Allocation Policy, 30 different ETFs have been successfully allocated. This includes 17 Merrill Lynch Holding Company Depositary Receipts (HOLDRs), a type of Trust Issued Receipt, 9 different types of Select Sector SPDRs, 1 MidCap SPDR, the Nasdaq-100 Index Tracking Stock (symbol QQQ), the Standard & Poor's Depositary Receipts (symbol SPY), and The Dow Industrials DIAMONDS (symbol DIA).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Allocation Policy was originally filed as a one-year pilot, which was approved by the Commission on May 7, 2001.[4] Certain aspects of the pilot program were subsequently amended.[5] The pilot program is due to expire on May 7, 2002. Therefore, the NYSE is seeking to extend the pilot relating to the Allocation Policy for an additional year.

Under the Allocation Policy, the ETFs traded on a UTP basis are allocated by a special committee, consisting of the Chairman of the Allocation Committee, the three most senior Floor broker members of the Allocation Committee, and four members of the Exchange's senior management as designated by the Chairman of the Exchange. This permits Exchange management, acting with key members of the Allocation Committee, to oversee directly the introduction of the UTP concept to the NYSE. For purposes of the Allocation Policy, ETFs collectively include Investment Company Units (as defined in paragraph 703.16 of the NYSE Listed Company Manual) and Trust Issued Receipts (as defined in NYSE Exchange Rule 1200).

Under the Allocation Policy, allocation applications are solicited by the Exchange, and the special committee reviews the same performance and disciplinary material reviewed by the Allocation Committee for allocating listed stocks on the Exchange.[6] In addition, specialist unit applicants are required to demonstrate:

(a) An understanding of the trading characteristics of ETFs;

(b) Expertise in the trading of derivatively-priced instruments;

(c ) Ability and willingness to engage in hedging activity as appropriate;

(d) Knowledge of other markets in which the ETF to be allocated trades;

(e) Willingness to provide financial and other support to relevant Exchange publicity and educational initiatives.

The special committee reviews specialist unit applications and reaches its allocation decision by majority vote. Any tie vote is decided by the Chairman of the Exchange. The Exchange has determined that, due to the unique aspects of certain ETF products, it may be helpful for the special committee to meet with and interview specialist units before making an allocation decision.

A specialist organization cannot be both the specialist in the ETF and the specialist in any security that is a component of the ETF. This restriction is necessary to avoid the possibility of ''wash sales'' in a situation where the specialist in the ETF needs to hedge by buying or selling component stocks of the ETF, and could inadvertently be trading with a proprietary bid or offer made by a specialist in the same member organization who is making a market in the component security.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

If the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change may become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] The Exchange has requested that the Commission waive the five-day pre-filing requirement and designate that the proposed rule change become operative immediately to permit the Exchange to continue the pilot program on an uninterrupted basis.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the five-day pre-filing requirement and designate the proposal immediately operative.[11] Accelerating the operative date and waiving the pre-filing requirement will permit the Exchange to continue the pilot program without undue delay. In addition, the Commission did not receive any comments on the original pilot program. Thus, the pilot program is extended through May 8, 2003. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[4] *See* Securities Exchange Act Release No. 44272 (May 7, 2001), 66 FR 26898 (May 15, 2001) (SR–NYSE–2001–07).

[5] *See* Securities Exchange Act Release Nos. 44306 (May 15, 2001), 66 FR 28008 (May 21, 2001) (SR–NYSE–2001–10); and 45729 (April 10, 2002), 67 FR 18970 (April 17, 2002) (SR–NYSE–2002–07).

[6] *See* Section IV of the Allocation Policy and Procedures approved in Securities Exchange Act No. 42746 (May 2, 2000), 65 FR 30171 (May 10, 2000) (SR–NYSE–99–34) for details of the performance and disciplinary material available to the Allocation Committee.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 NYSE. All submissions should refer to File No. SR-NYSE–2002–17 and should be submitted by June 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45872; File No. SR–PCX–2002–21]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Reduction of a Surcharge Fee for the Automatic Execution of Broker-Dealer Orders

May 3, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on April 11, 2002, the Pacific Exchange, Inc. (''Exchange'' or ''PCX'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to modify its Schedule of Fees and Charges by reducing the surcharge fee for the automatic execution of broker-dealer orders from $0.45 to $0.20.

The text of the proposed rule change is available at the PCX and at the Commission.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

I. Purpose

The Exchange is proposing to reduce the per contract surcharge fee for all broker-dealer orders [3] executed via the Exchange's automatic execution system (''Auto-Ex''). The current $0.45 per contract surcharge fee for the automatic execution of broker-dealer orders was filed for immediate effectiveness on February 4, 2002.[4] After review of the surcharge, the Exchange believes that a reduction of the fee would encourage participation in the program and that the reduction is reasonable and appropriate.

On November 6, 2001, the Commission approved a PCX rule change proposal to amend PCX Rule 6.87(b) to permit broker-dealer orders to be executed on Auto-Ex.[5] The amendments to PCX Rule 6.87(b) were implemented on an issue-by-issue basis, subject to the approval of the Options Floor Trading Committee.[6]

The Exchange proposes to reduce the per contract surcharge on all trades executed pursuant to the proposed rule change from a $0.45 to $0.20. The Exchange represents that, under the proposal, *all* trades executed via Auto-Ex on behalf of broker-dealers will be uniformly assessed the fee. The Exchange also represents that the surcharge for automatic execution of broker-dealer orders will only be charged to member firms. The Exchange asserts that these firms will be assessed the fee monthly. The Exchange represents that bills will be issued to these firms approximately five days after the end of each trade month. The Exchange asserts that the surcharge will not apply to non-members.

The Exchange represents that amended PCX Rule 6.87(b) extends the benefits of automatic execution to broker-dealers.[7] The Exchange asserts that such change provides instant execution without the need for a floor broker. The Exchange represents that the fast turnaround time minimizes the possibility that the market will move away from the prevailing quote. The Exchange asserts that broker-dealers who want to access the PCX's markets, but who do not want to pay the surcharge, can send their orders to the PCX for manual execution by Floor Brokers. The Exchange believes, however, that the benefits of automatic execution outweigh the burden of paying the surcharge.

The Exchange represents that broker-dealer orders that are automatically executed on Auto-Ex are not subject to brokerage fees that would otherwise be imposed by PCX members. The Exchange believes that the floor brokerage fees on broker-dealer order executions are generally comparable to the proposed surcharge amount. The Exchange represents that broker-dealer orders routed to Floor Broker Hand Held Terminals are not subject to the surcharge. The Exchange asserts that the surcharge is in addition to existing fees.

The Exchange represents that the fee will recoup costs associated with developing the new feature allowing automatic execution of broker-dealer orders in designated option issues. The Exchange asserts that the costs required to allow its Pacific Options Exchange Trading System (''POETS'') to accept and execute these orders included an extensive system design change, programming and testing, and that billing programming was also required. The Exchange believes the fee is reasonable. The Exchange proposes that the reduction in the surcharge become effective on April 15, 2002.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation

[3] A broker-dealer order is an order for the account of a registered broker-dealer.

[4] *See* Securities Exchange Act Release No. 45662 (March 27, 2002), 67 FR 16786 (April 8, 2002) (SR–PCX–2002–10).

[5] *See* Securities Exchange Act Release No. 45032 (November 6, 2001), 66 FR 57145 (November 14, 2001) (SR–PCX–2000–05) (approving portion of proposal that allowed for orders for the account of broker-dealers to be executed on Auto-Ex on an issue-by-issue basis).

[6] *Id.*

[7] The Exchange represents that, previously, these benefits were only available to public customers.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

of reasonable dues, fees, and other charges among its members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and subparagraph (f)(2) of Rule 19b-4 [11] thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of April 11, 2002, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–21 and should be submitted by June 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 02–11890 Filed 5–10–02; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] *See* 15 U.S.C. 78(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45889; File No. SR–Phlx–2002–28]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend PACE Price Improvement and Order Execution and Price Protection Pilot Programs

May 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 24, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed this proposal under Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) [4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to extend through September 30, 2002 two PACE [5] pilot programs that were introduced with the advent of decimal pricing in the securities industry. The first PACE pilot program, which is found in Supplementary Material .07(c)(i) to Phlx Rule 229, consists of an automated price improvement feature that incorporates a percentage of the spread between the bid and the offer (''price improvement pilot program''). The price improvement pilot program has been in effect since January 30, 2001.[6]

The second PACE pilot program, which is found in Supplementary Material .05 and .07(c)(ii) to Phlx Rule 229, incorporates immediate execution of certain market orders through the Public Order Exposure System (''POES'') and mandatory double-up/double-down price protection (the ''order execution and price protection pilot program''). The order execution and price protection pilot program has been in effect since August 25, 2000.[7]

The Phlx is not proposing any changes, substantive or otherwise, to the price improvement pilot program or the order execution and price protection pilot program, other than extending the pilot programs through September 30, 2002. The text of the proposed rule change is available at the Phlx and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The Phlx requested that the Commission waive the 5-day pre-filing notice requirement, and the 30-day operative delay.

[5] Philadelphia Stock Exchange Automated Communication and Execution System is the Phlx's automated order routing, delivery, execution and reporting system for equities.

[6] The price improvement pilot program was established in SR–Phlx–2001–12. *See* Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001). It was extended several times, currently through April 15, 2002. *See* Securities Exchange Act Release Nos. 44672 (August 9, 2001), 66 FR 43285 (August 17, 2001) (SR–Phlx–2001–67); 45078 (November 19, 2001), 66 FR 59293 (November 27, 2001) (SR–Phlx–2001–101); and 45284 (January 15, 2002), 67 FR 3253 (January 23, 2002) (SR–Phlx–2002–01).

[7] The order execution and price protection pilot program was established in SR–Phlx–2000–08. *See* Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000). It was extended several times, currently through April 15, 2002. *See* Securities Exchange Act Release Nos. 44185 (April 16, 2001), 66 FR 20511 (April 23, 2001) (SR–Phlx–2001–20); 44818 (September 19, 2001), 66 FR 49240 (September 26, 2001) (SR–Phlx–2001–81); 45079 (November 19, 2001), 66 FR 59292 (November 27, 2001) (SR–Phlx–2001–102); and 45295 (January 16, 2002), 67 FR 3624 (January 24, 2002) (SR–Phlx–2002–03).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to extend the price improvement pilot program and the order execution and price protection pilot program through September 30, 2002. No other changes are proposed to these pilot programs at this time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [8] in general, and in particular, with Section 6(b)(5),[9] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement, and accelerate the operative date. The Commission finds good cause to waive the pre-filing notice requirement, and to designate the proposal to be both effective and operative upon filing because such designation is consistent with the protection of investors and the public interest. Waiver of these requirements will allow the pilot programs to continue uninterrupted through September 30, 2002. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[12]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 Exchange. All submissions should refer to file number SR–Phlx–2002–28, and should be submitted by June 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–11887 Filed 5–10–02; 8:45 am]

**BILLING CODE 8010–01–P**

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3407]**

### Federated States of Micronesia; State of Yap; Disaster Loan Areas

The State of Yap in the Federated States of Micronesia constitutes a disaster area as a result of damages caused by Typhoon Mitag that began on February 26 and continued through March 3, 2002. The typhoon caused structural damages throughout the State of Yap from wind, rain, strong tidal surges and flooding in low-lying coastal areas. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 8, 2002, and for economic injury until the close of business on February 7, 2003, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 6.625 |
| Homeowners without credit available elsewhere | 3.312 |
| Businesses with credit available elsewhere | 7.000 |
| Businesses and non-profit organizations without credit available elsewhere | 3.500 |
| Others (including non-profit organizations) with credit available elsewhere | 6.375 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 3.500 |

The number assigned to this disaster for physical damage is 340706 and for economic damage is 9P3800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 7, 2002.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 02–11927 Filed 5–10–02; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3410]**

### State of Ohio; Disaster Loan Areas

Stark County and the contiguous Counties of Carroll, Columbiana, Holmes, Mahoning, Portage, Summit, Tuscarawas and Wayne in the State of Ohio constitute a disaster area due to

damages caused by a tornado, high winds and severe thunderstorms that occurred April 28, 2002. Applications for loans for physical damage may be filed until the close of business on July 8, 2002, and for economic injury until the close of business on February 7, 2003, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 6.750 |
| Homeowners without credit available elsewhere | 3.375 |
| Businesses with credit available elsewhere | 7.000 |
| Businesses and non-profit organizations without credit available elsewhere | 3.500 |
| Others (including non-profit organizations) with credit available elsewhere | 6.375 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 3.500 |

The number assigned to this disaster for physical damage is 341012 and for economic injury is 9P5300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 7, 2002.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 02–11926 Filed 5–10–02; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3409]**

### Commonwealth of Virginia

As a result of the President's major disaster declaration on May 5, 2002, I find that Buchanan and Tazewell Counties in the Commonwealth of Virginia constitute a disaster area due to damages caused by severe storms, tornadoes and flooding occurring on April 28, 2002 through May 3, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 4, 2002 and for economic injury until the close of business on February 5, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bland, Dickenson, Russell and Smyth Counties in the Commonwealth of Virginia; Pike County in the State of Kentucky; and McDowell, Mercer and Mingo counties in the State of West Virginia.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 6.750 |
| Homeowners without credit available elsewhere | 3.375 |
| Businesses with credit available elsewhere | 7.000 |
| Businesses and non-profit organizations without credit. | |
| Available elsewhere | 3.500 |
| Others (including non-profit organizations) with credit. | |
| Available elsewhere | 6.375 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 3.500 |

The number assigned to this disaster for physical damage is 340911. For economic injury the number is 9P4200 for Virginia; 9P4300 for Kentucky; and 9P4400 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 6, 2002.

**Herbert L. Mitchell,**

*Associate Administrator For Disaster Assistance.*

[FR Doc. 02–11789 Filed 5–10–02; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3408]**

### State of West Virginia

As a result of the President's major disaster declaration on May 5, 2002, I find that McDowell, Mercer, Mingo and Wyoming Counties in the State of West Virginia constitute a disaster area due to damages caused by severe storms, flooding and landslides occurring on May 2, 2002 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 4, 2002 and for economic injury until the close of business on February 5, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Boone, Lincoln, Logan, Raleigh, Summers and Wayne Counties in the State of West Virginia; Martin and Pike Counties in the State of Kentucky; and Bland, Buchanan, Giles and Tazewell Counties in the Commonwealth of Virginia.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 6.750 |
| Homeowners without credit available elsewhere | 3.375 |
| Businesses with credit available elsewhere | 7.000 |
| Businesses and non-profit organizations without credit available elsewhere | 3.500 |
| Others (Including non-profit organizations) with credit available elsewhere | 6.375 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 3.500 |

The number assigned to this disaster for physical damage is 340811. For economic injury the number is 9P3900 for West Virginia; 9P4000 for Kentucky; and 9P4100 for Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 6, 2002.

**Herbert L. Mitchell,**

*Associate Administrator, For Disaster Assistance.*

[FR Doc. 02–11790 Filed 5–10–02; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

### Bureau of Oceans and International Environmental and Scientific Affairs

**[Public Notice 4017]**

### Certifications Pursuant to Section 609 of Public Law 101–162; Relating to the Protection of Sea Turtles in Shrimp Travel Fishing Operations

**SUMMARY:** On April 27, 2002, the Department of State certified, pursuant to section 609 of Public Law 101–162 (''Section 609''), that 17 nations have adopted programs to reduce the incidental capture of sea turtles in their shrimp fisheries comparable to the program in effect in the United States.

The Department also certified that the fishing environments in 24 other countries and one economy, Hong Kong, do not pose a threat of the incidental taking of sea turtles protected under Section 609. Shrimp imports from any nation not certified were prohibited effective May 1, 2002 pursuant to Section 609.

*Effective Date:* On Publication.

**FOR FURTHER INFORMATION CONTACT:** David Hogan, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520–7818; telephone: (202) 647–2335.

**SUPPLEMENTARY INFORMATION:** Section 609 of Public Law 101-162 prohibits imports of certain categories of shrimp unless the President certifies to the Congress not later than May 1 of each year either: (1) That the harvesting nation has adopted a program governing the incidental capture of sea turtles in its commercial shrimp fishery comparable to the program in effect in the United States and has an incidental take rate comparable to that of the United States; or (2) that the fishing environment in the harvesting nation does not pose a threat of the incidental taking of sea turtles. The President has delegated the authority to make this certification to the Department of State. Revised State Department guidelines for making the required certifications were published in the Federal Register on July 8 1999 (Vol. 64, No. 130, page 36946, Public Notice 3086).

On April 27, 2002, the Department certified 17 nations on the basis that their sea turtle protection program is comparable to that of the United States: Belize, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Nigeria, Pakistan, Panama, Suriname, Thailand, Trinidad and Tobago, and Venezuela.

The Department also certified 24 shrimp harvesting nations and one economy as having fishing environments that do not pose a danger to sea turtles. Sixteen nations have shrimping grounds only in cold waters where the risk of taking sea turtles is negligible. They are: Argentina, Belgium, Canada, Chile, Denmark, Finland, Germany, Iceland, Ireland, the Netherlands, New Zealand, Norway, Russia, Sweden, the United Kingdom, and Uruguay. Eight nations and one economy only harvest shrimp using small boats with crews of less than five that use manual rather than mechanical means to retrieve nets, or catch shrimp in using other methods that do not threaten sea turtles. Use of such small-scale technology does not adversely affect sea turtles. The nine nations and one economy are: the Bahamas, China, the Dominican Republic, Fiji, Hong Kong, Jamaica, Oman, Peru and Sri Lanka.

The Department of State has communicated the certifications under Section 609 to the Office of Trade Program of the United States Customs Service.

Dated: April 29, 2002.

**David A Balton, Acting**

*Deputy Assistant Secretary, For Oceans and Fisheries, Department of State.*

[FR Doc. 02–11901 Filed 5–10–02; 8:45 am]

**BILLING CODE 4710–09–P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[USCG–2002–12272]**

### Merchant Marine Personnel Advisory Committee; Meeting

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** A working group of the Merchant Marine Personnel Advisory Committee (MERPAC) will meet to discuss task statement #34 concerning the minimum standard of competence in security necessary for a ship's security officer and crew. MERPAC advises the Secretary of Transportation on matters relating to the training, qualifications, licensing, certification, and fitness of seamen serving in the U.S. merchant marine. This meeting will be open to the public.

**DATES:** The MERPAC working group will meet on Tuesday, June 18, 2002, from 8:30 a.m. to 3:30 p.m. This meeting may adjourn early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before June 4, 2002. Written material and requests to have a copy of your material distributed to each member of the working group should reach the Coast Guard on or before June 4, 2002.

**ADDRESSES:** The working group of MERPAC will meet in room 1103, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. Further directions regarding the location of U.S. Coast Guard Headquarters may be obtained by contacting Mr. Mark Gould at (202) 267–6890. Send written material and requests to make oral presentations to Commander Brian J. Peter, Commandant (G-MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** For questions on this notice, contact Commander Brian J. Peter, Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–6890, fax 202–267–4570, or e-mail *mgould@comdt.uscg.mil.*

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

**Agenda of June 18, 2002 Meeting**

The working group will meet to discuss the Knowledge, Understanding, and Proficiency (KUPs) required to train a ship security officer in the minimum competencies detailed in task statement #34. The International Maritime Organization's Maritime Safety Committee (MSC) will further consider the competencies to be required of ship security officers and other crew members at its 75th session which will be held from 15–24 May 2002. The United States' proposal is contained in MSC paper 75/17/30 (located at *http://www.uscg.mil/hq/g-m/nmc/imosec/75–17–30.pdf*). The MERPAC working group will consider any action taken on this proposal by the MSC. The working group will develop the KUPs into a table format similar to Section A of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), as amended, Code. At the end of the day, the working group will re-cap its discussions and prepare the table for the full committee to consider at its next meeting.

**Procedural**

This meeting is open to the public. Please note that the meeting may adjourn early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than June 4, 2002. Written material for distribution at the meeting should reach the Coast Guard no later than June 4, 2002. If you would like a copy of your material distributed to each member of the committee or working group in advance of the meeting, please submit 25 copies to the Executive Director no later than June 4, 2002. We request that members of the public who plan to attend this meeting notify Mr. Mark Gould at the number listed in **ADDRESSES** above so that

building security officials may be notified.

**Information on Services for Individuals With Disabilities**

For information on facilities or services for individuals With disabilities or to request special assistance at the meeting, contact the Assistant Executive Director as soon as possible.

Dated: May 7, 2002.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety, Security and Environmental Protection.*

[FR Doc. 02–11918 Filed 5–10–02; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2002–35]**

### Petitions for Exemption; Summary of Petitions Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before June 3, 2002.

**ADDRESSES:** Send comments on the petition to the Docket Manager System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–XXXXX at the beginning 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 the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Pat Siegrist (425–227–2126), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave., SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on May 8, 2002.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

**Petitions for Exemption**

*Docket No.:* FAA–2002–12142.

*Petitioner:* Airbus.

*Section of 14 CFR Affected:* 14 CFR 25.901(c).

*Description of Relief Sought:* To permit Rolls-Royce Trent 500 series engines to be certified on Airbus Model A340–500 and A340–600 series airplanes on the basis that, while this type design may not strictly comply with an applicable rule, it would provide some improvement in the level of safety compared to that of currently approved A340 and other similar airplane type designs.

[FR Doc. 02–11910 Filed 5–10–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2002–36]**

### Petitions for Exemption; Summary of Petitions Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before June 3, 2002.

**ADDRESSES:** Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–11998 at the beginning of your comments. If you wish to receive confirmation that 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 the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on May 8, 2002.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

**Petitions for Exemption**

*Docket No.:* FAA–2002–11845.

*Petitioner:* General electric Company.

*Section of 14 CFR Affected:* 14 CFR 33.73(b).

*Description of Relief Sought:* To exempt GE90–110B1, GE90–113B, and GE90–115B engine models from meeting the 5-second thrust response requirement to accommodate a control system enhancement made to optimize engine operability at high corrected core airflow conditions.

[FR Doc. 02–11911 Filed 5–10–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 172: Future Air-Ground Communications in the Very High Frequency (VHF) Aeronautical Data Band (118–137 MHz)

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

**ACTION:** Notice of RTCA Special Committee 172 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 172: Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz).

**DATES:** The meeting will be held May 28–31, 2002 from 9 am to 5 pm each day.

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street, NW. Suite 805, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, SW., Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 172 meeting. The agenda will include:

- May 28:
- Opening Plenary session (Welcome and Introductory Remarks, Review of Agenda, Review Summary of Previous Meeting)
- Prepare DO–224A Change 2 for Final Review and Comment (FRAC)
- May 29, 30:
- Continue work on DO–224A Change 2 for FRAC
- Work on DO–271A for FRAC
- May 31:
- Continue work on DO–271A for FRAC
- Plenary Reconvenes (Approve both DO–224A Change 2 and DO–271A for FRAC)
- Review Relevant International Activities (EUROCAE WG 47 status and issues, Others as appropriate)
- Closing Plenary Session (Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 7, 2002.

**Janice L. Peters,**

*FAA Special Assistant, RTCA Advisory Committee.*

[FR Doc. 02–11907 Filed 5–10–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application (02–04–C–00–ASE) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Aspen/Pitkin Airport, Submitted by the County of Pitkin, Aspen/Pitkin County Airport, Aspen, Colorado

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at the Aspen/Pitkin County Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before June 12, 2002.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 East 68th Avenue, Suite 224; Denver, Colorado 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James P. Elwood, Director of Aviation, at the following address: 0233 East Airport Road, Aspen, Colorado 81611.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Aspen/Pitkin County Airport, under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Christopher J. Schaffer, (303) 342–1258 Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 East 68th Avenue, Suite 224; Denver, Colorado 80249–6361. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application (02–04–C–00–ASE) to impose and use PFC revenue at the Aspen/Pitkin County Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 6, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Pitkin, Aspen/Pitkin County Airport, Aspen, Colorado, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 3, 2002.

The following is a brief overview of the application.

*Level of the proposed PFC:* $4.50.

*Proposed charge effective date:* May 1, 2003.

*Proposed charge expiration date:* August 1, 2004.

*Total requested for use approval:* $986,381.

*Brief description of proposed projects:* Airport Master Plan; East Side Infrastructure Development (ESID) Planning and Design; Relocation/Rehabilitation of North General Aviation Apron; Construction of Aircraft Parking Apron; Replace Runway Lighting and Install Runway End Identification Lights on Runway 33; Replace Wildlife Fence; Installation of Medium Intensity Approach Lighting System (MALSF).

*Class or classes of air carriers that the public agency has requested not be required to collect PFC's:* All air traffic/commercial operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Aspen/Pitkin County Airport.

Issued in Renton, Washington on May 6, 2002.

**David A. Field,**

*Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.*

[FR Doc. 02–11908 Filed 5–10–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent to Rule on Application (02–05–U–00–GJT) To Use Passenger Facility Charge (PFC) Revenue at the Walker Field Airport, Submitted by the Walker Field Airport Authority, Grand Junction, Colorado

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to use PFC revenue at the Walker Field Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before June 12, 2002.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Corinne C. Nystrom, Airport Manager, at the following address: Walker Field Airport Authority, 2828 Walker Field Drive, Suite 301, Grand Junction, Colorado 81506.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Walker Field Airport Authority, under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chris Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application (02–05–U–00–GJT) to use a PFC at the Walker Field Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 6, 2002, the FAA determined that the application to use PFC revenue, submitted by the Walker Field Airport Authority, Grand Junction, Colorado, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 3, 2002.

The following is a brief overview of the application.

*Level of the proposed PFC:* $3.00.

*Proposed charge effective date:* August 1, 2002.

*Proposed charge expiration date:* September 1, 2006.

*Total requested for use approval:* $1,480,000.00.

*Brief description of proposed project:* Expand Terminal Building Boarding Area, Concourses, and Loading Bridges.

*Class or classes of air carriers which the public agency has requested not be required to collect PFC's:* None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Walker Field Airport.

Issued in Renton, Washington on May 6, 2002.

**David A. Field,**

*Manager, Planning, Programming, and Capacity Branch, Northwest Mountain Region.*

[FR Doc. 02–11909 Filed 5–10–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF THE TREASURY

### Customs Service

### Use or Replacement of Continuous Bonds That Were Destroyed in New York

**AGENCY:** United States Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** This notice advises the public of the procedures that must be followed by importers to ensure continuous bond coverage on future import transactions in the case of continuous bonds maintained by Customs in New York that were destroyed in the terrorist attack on September 11, 2001.

**DATES:** A copy of a current bond must be provided to Customs, or a new bond must be filed with Customs, on or before June 12, 2002.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding operational issues: The Entry and Drawback Management Branch, Office of Field Operations (202–927–0360). For inquiries about specific bonds: The Customs Bond Unit, Elizabeth, New Jersey (201–443–0234). A party making a telephonic inquiry regarding a specific bond should be prepared to provide its importer name and identification number.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Customs laws and regulations require the posting of a surety bond to secure Customs transactions involving specific types of activities (for example, the importation and entry of merchandise, the custody of imported merchandise, the arrival and clearance of conveyances). A Customs bond may be approved by Customs for a particular activity involving one individual Customs transaction (for example, a single entry bond) or may be approved by Customs as a continuous bond for a particular activity involving multiple Customs transactions (for example, a continuous importation and entry bond). A single transaction bond normally is approved by Customs when presented in connection with the individual transaction to which it relates and remains in effect only for purposes of that one transaction. An application for a continuous transaction bond normally is filed with, and approved by, Customs before all of the transactions to which it relates arise, and the approved bond is retained on file by Customs and remains in effect until terminated by the parties to the bond.

The terrorist attack on the World Trade Center in New York on September 11, 2001, resulted in the destruction of Customs bonds and other documents that were being stored at the Customs offices at 6 World Trade Center. The destroyed bonds and other documents included, but were not limited to, continuous bonds which were filed for approval at the New York Seaport (port code 1001) and at the New York Regional Port (port code 7200). In order to ensure uninterrupted bond coverage and avoid the need to file an application for a new continuous bond, each party having a continuous bond of any type involving activity code 1 to 5 that has an effective date of September 11, 2001, or earlier and that was filed at either of the two ports referred to above and that remains in effect on the date of publication of this notice must, within 30 days of the date of publication of this notice, provide Customs with a copy of that bond together with the Customs bond number and copies of any riders to the bond. Failure to provide a copy

of the bond within the prescribed 30 day period will cause Customs to refuse to accept a reference to the bond to guarantee future transactions. If a copy of the bond cannot be provided, the party must submit to Customs a new continuous bond application within the same 30-day period. For purposes of this notice, the term ''party'' refers to any individual or business association that prior to, or on or after, September 11, 2001, has engaged in activities secured by a continuous bond described above as having been destroyed on that date, either by virtue of being listed as a ''Principal'' on the bond or by virtue of being listed as a user in ''Section III'' on the bond.

The copy of the continuous bond or the new continuous bond application should be sent to either of the following addresses:

U.S. Customs Service,
Attention: Bond Desk,
1210 Corbin Street,
Elizabeth, New Jersey 07201;

or

U.S. Customs Service,
Attention: Bond Desk,
Bldg. 77,
JFK Airport,
Jamaica, New York 11430.

Dated: May 7, 2002.

**Bonni G. Tischler,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. 02–11788 Filed 5–10–02; 8:45 am]

**BILLING CODE 4820–02–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–107069–97]**

### Proposed Collection; Comment Request for Regulation Project

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–107069–97 (TD 8940), Purchase Price Allocations in Deemed and Actual Asset Acquisitions (§§ 1.338–2, 1.338–5, 1.338–10, 1.338(h)(10)–1, and 1.1060–1).

**DATES:** Written comments should be received on or before July 12, 2002, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Purchase Price Allocation in Deemed and Actual Asset Acquisition.

*OMB Number:* 1545–1658.

*Regulation Project Numbers:* REG–107069–97.

*Abstract:* Section 338 of the Internal Revenue Code provides rules under which a qualifying stock acquisition is treated as an asset acquisition (a ''deemed asset acquisition'') when an appropriate election is made. Section 1060 provides rules for the allocation of consideration when a trade or business is transferred. The collection of information is necessary to make the election, to calculate and collect the appropriate amount of tax liability when a qualifying stock acquisition is made, to determine the persons liable for such tax, and to determine the bases of assets acquired in the deemed asset acquisition.

*Current Actions:* There is no change to this existing regulation.

*Type of review:* Extension of OMB approval.

*Affected Public:* Business or other for-profit organizations, and farms.

The regulation provides that a section 338 election is made by filing Form 8023. The burden for this requirement is reflected in the burden of Form 8023. The regulation also provides that both a seller and a purchaser must each file an asset acquisition statement on Form 8594. The burden for this requirement is reflected in the burden of Form 8594.

The burden for the collection of information in § 1.338–2T(e)(4) is as follows:

*Estimated Number of Respondents/Recordkeeper:* 45.

*Estimated Average Annual Burden Per Respondent/Recordkeeper:* 34 minutes.

*Estimated Total Annual Reporting/Recordkeeping Hours:* 25.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 6, 2002.

**Carol Savage,**

*Program Analyst.*

[FR Doc. 02–11794 Filed 5–10–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 9620

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C.

3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 9620, Race and National Origin Identification.

**DATES:** Written comments should be received on or before July 12, 2002, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Race and National Origin Identification.

*OMB Number:* 1545–1398.

*Form Number:* 9620.

*Abstract:* Form 9620 is an optically scannable form that is used to collect race and national origin data on all IRS employees and new hires. The form is a valuable tool in allowing the IRS to meet its diversity/EEO goals and as a component of its referral and tracking system and recruitment program.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, and the Federal Government.

*Estimated Number of Respondents:* 50,000.

*Estimated Time Per Respondent:* 3 minutes.

*Estimated Total Annual Burden Hours:* 2,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 7, 2002.

**Carol Savage,**

*Program Analyst.*

[FR Doc. 02–11795 Filed 5–10–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 2002–32

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2002–32, Waiver of 60-month Bar on Reconsolidation after Disaffifiliation.

**DATES:** Written comments should be received on or before July 12, 2002, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the internet *(CAROL.A.SAVAGE@irs.gov.),* Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Waiver of 60-month Bar on Reconsolidation after Disaffiliation.

*OMB Number:* 1545–1784.

*Revenue Procedure Number:* Revenue Procedure 2002–32.

*Abstract:* Revenue Procedure 2002–32 provides qualifying taxpayers with a waiver of the general rule of § 1504(a)(3)(A) of the Internal Revenue Code barring corporations from filing consolidated returns as a member of a group of which it had been a member for 60 months following the year of disaffiliation.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated number of respondents:* 20.

The estimated annual burden per respondent varies from 2 hours to 8 hours, depending on individual circumstances, with an estimated average of 5 hours.

*Estimated total annual reporting burden:* 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 3, 2002.

**Carol Savage,**

*Program Analyst.*

[FR Doc. 02–11796 Filed 5–10–02; 8:45 am]

BILLING CODE 4830–01–P

# Reader Aids

**Federal Register**

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## CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

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**Federal Aviation Administration**

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**Federal Aviation Administration**

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**Federal Aviation Administration**

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**Federal Motor Carrier Safety Administration**

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

**H.R. 861/P.L. 107–169**

To make technical amendments to section 10 of title 9, United States Code. (May 7, 2002; 116 Stat. 132)

**H.R. 4167/P.L. 107–170**

To extend for 8 additional months the period for which chapter 12 of title 11 of the United States Code is reenacted. (May 7, 2002; 116 Stat. 133)

**Last List May 2, 2002**

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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[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, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 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.