6–26–02 Wednesday
Vol. 67 No. 123 June 26, 2002
Pages 42981–43216

# Federal Register

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000–NE–49–AD; Amendment 39–12787; AD 2002–12–15]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), that is applicable to Pratt & Whitney PW4000 series turbofan engines. That AD requires operators to perform initial and repetitive inspections for cracking of high pressure compressor (HPC) front drum rotors based on cycle usage. That AD also requires the removal from service of any cracked HPC front drum rotors. This amendment clarifies inspection requirements for cracking of HPC front drum rotors that have fewer than 1,000 cycles-since-new (CSN). This amendment is prompted by comments from operators seeking more clarity about the inspection requirements of paragraph (a)(1) of that AD. The actions specified by this AD are intended to prevent HPC drum rotor failure from cracks that could result in an uncontained engine failure and damage to the airplane.

**DATES:** Effective date July 31, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 31, 2002.

**ADDRESSES:** The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington MA 01803–5299; telephone: (781) 238–7130, fax: (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–20–13, Amendment 39–12461 (66 FR 52023, October 12, 2001), which is applicable to Pratt & Whitney PW4000 series turbofan engines, was published in the **Federal Register** on January 15, 2002 (67 FR 1913). That action proposed to clarify inspection requirements for cracking of HPC front drum rotors that have fewer than 1,000 cycles-since-new (CSN), in accordance with Pratt & Whitney Alert Service Bulletin (ASB) PW4ENG A72–722, dated September 29, 2000 and ASB PW4ENG A72–722, Revision 1, dated June 7, 2001.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

### Request for Inspection Clarification

Two commenters state that in proposed paragraph (a), the inspection requirements are not clear for HPC front drum rotors with fewer than 1,000 cycles-since-new (CSN). One of the commenters states that the requirements are not clear on how to fulfill the initial inspection for HPC front drum rotors with less than 1,000 CSN. The commenter states that proposed paragraph (a)(1) refers to an HPC front drum rotor with less than 1,000 CSN, but the front drum must have accumulated at least 1,000 CSN before an initial inspection can be carried out. Therefore, it is not possible to fulfill the AD. The commenter suggests changing the wording of paragraph (a)(1) to say that HPC front drum rotors must have accumulated at least 1,000 CSN before an inspection can be carried out as an initial inspection.

The FAA does not agree. Proposed paragraph (a)(1) states that HPC front drum rotors may have fewer than 1,000 cycles-since-new on the effective date of the AD, and further states that after the front drum rotors accumulate 1,000 cycles-since-new (CSN), the initial inspection must be done within 500 cycles-in-service. This is consistent with the requirements of Pratt & Whitney ASB PW4ENG A72–722, dated September 29, 2000 and ASB PW4ENG A72–722, Revision 1, dated June 7, 2001. Proposed paragraph (a)(1) addresses front drum rotors that have fewer than 1,000 cyles-since-new on the effective date of the AD in order to include them in the inspection program. Therefore, no changes are necessary and the proposed paragraph (a) is adopted without change.

### Request for Same Effective Date

One commenter requests that the effective date of the superseding AD be the same as the effective date of ASB PW4ENG A72–722, Revision 1, dated June 7, 2001. The commenter expresses concern that the effective date of the superseding AD would require changing the operators' ongoing inspection program.

The FAA does not agree that the effective date of the superseding AD must be the same as the effective date of Revision 1 of the ASB. The actions in the AD are required unless already done. Also, the inspections are based on the number of cycles the HPC front drum rotor has accumulated since new. An on-going inspection program is not affected by a change in the effective date of the AD.

### Incorporate Off-Wing Inspection Program

One commenter notes that the proposal differs from the ASB, by not including the off-wing repetitive inspection program. The commenter states that when an engine is removed in accordance with another AD, AD 2001–25–11, the engine may be returned to service without HPC disassembly. Therefore, the off-wing borescope inspection program is necessary in this

superseding AD and the commenter requests it be incorporated in the AD.

The FAA partially agrees. The FAA does not agree that the off-wing borescope inspection program must be incorporated in the AD. In the discussion of comments section of AD 2001–20–13, published in the **Federal Register** on October 12, 2001, it was noted that there are differences between the manufacturer's service information and the AD. The FAA stated that ASB PW4ENG A72–722, Revision 1, dated June 7, 2001, provides procedures for operators to perform off-wing initial and repetitive HPC drum rotor inspections, and that the off-wing requirements are not mandated by AD 2001–20–13. The FAA evaluated a 20-year cumulative risk assessment and determined that an acceptable level of safety will be met by requiring the on-wing inspections at the cyclic intervals detailed in the ASB. This description was not provided in the proposal. As the commenter states, operators performing the actions of AD 2001–20–13 have access to the HPC module, and can perform the off-wing HPC front drum rotor inspections of the ASB. It is noted in the ASB that the inspection program is intended for incorporation on engines installed on aircraft but may be incorporated on engines in the shop. The FAA agrees that using the off-wing procedures satisfies the repetitive inspection requirement. Therefore, paragraph (b) of the AD now reflects that option.

**Concern Over Engines Already in ASB Compliance**

One commenter expresses concern that the proposal does not address engines that have met the requirements of the ASB before the effective date of the AD. Another commenter expresses concern that the proposal does not reference engines that have complied with the ASB during a shop visit before the effective date of the AD. The commenters request that paragraph (a) of the AD reference the off-wing borescope inspection in accordance with off-wing inspection paragraphs of ASB PW4ENG A72–722. The commenters also request that a paragraph be added to the AD to state that HPC drum rotors previously inspected in accordance with the on-wing and off-wing accomplishment instructions of the ASB's before the effective date of the AD, satisy the initial inspection requirements of the AD.

The FAA partially agrees. The FAA does not agree that the off-wing borescope inspection program must be incorporated in the AD, as explained previously in the third comment response. The FAA agrees that inspection of HPC front drum rotors in accordance with the off-wing inspection instructions of the ASB before the effective date of the AD, satisfies the initial inspection requirements of the AD. Therefore, a new sub-paragraph (7) is added to paragraph (a) of the AD to allow the use of off-wing inspections of the HPC front drum rotors to satisfy the initial inspection requirement.

**Inspect at Part Level**

One commenter states that the repetitive inspection program is not at part level and requests that the repetitive inspection program be at part level.

The FAA disagrees that a part level inspection program should be added to the AD. Because the actions required by this AD are on-wing borescope inspections, the engine does not need to be disassembled to the part level in order to do the required actions.

**Approve Proposal As Written**

Two commenters approve of the proposal as written. After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

**Economic Analysis**

The FAA estimates that this superseding AD will result in no additional costs to operators beyond those already incurred to comply with the current AD.

**Regulatory Analysis**

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

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39–12461 (66 FR 52023, October 12, 2001) and by adding a new airworthiness directive, Amendment 39–12787, to read as follows:

**2002–12–15 Pratt & Whitney:** Amendment 39–12787. Docket No. 2000–NE–49–AD. Supersedes AD 2001–20–13, Amendment 39–12461.

*Applicability:* This airworthiness directive (AD) applies to Pratt & Whitney (PW) models PW4052, PW4056, PW4060, PW4062, PW4152, PW4156A, PW4158, PW4460, and PW4462 turbofan engines. These engines are installed on but not limited to Boeing 747, 767, McDonnell Douglas MD–11, Airbus Industrie A300, and A310 series airplanes.

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

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

To prevent failure of the high pressure compressor (HPC) front drum rotor from cracks, that could result in an uncontained engine failure and damage to the airplane, do the following:

**Initial Inspection**

(a) Perform an initial borescope inspection for cracks in accordance with the Accomplishment Instructions, On-Wing paragraphs 1 through 13, of Pratt & Whitney (PW) Alert Service Bulletin (ASB) No. PW4ENG A72–722, dated September 29, 2000 or Revision 1, dated June 7, 2001, as follows:

(1) For HPC front drum rotors with fewer than 1,000 cycles-since-new (CSN) on the effective date of this AD, perform an initial inspection within 500 cycles-in-service (CIS) after accumulating 1,000 CSN.

(2) For HPC front drum rotors with 1,000 CSN or more after the effective date of this AD, perform an initial inspection within 500 CIS after the effective date of this AD.

(3) If the presence of a crack needs to be confirmed, perform an eddy current inspection (ECI) within five flight cycles of the on-wing borescope inspection.

(4) If the presence of a crack needs to be confirmed and the suspect crack indication extends from the knife edges to the disk radius directly adjacent to the spacer wall of the sixth or seventh stage as shown in Figures 2 and 3 of PW ASB No. PW4ENG A72–722, dated September 29, 2000, or Revision 1, dated June 7, 2001, the ECI inspection must be done before further flight.

(5) If the presence of a crack is confirmed, remove and replace the HPC front drum rotor with a serviceable part before further flight.

(6) HPC front drum rotors fluorescent penetrant inspected at the last shop visit, as cited in the compliance section of the ASB, within 500 cycles of the effective date of this AD, satisfy the initial inspection requirement.

(7) HPC front drum rotors inspected at the last shop visit, in accordance with Off-Wing paragraphs 1 through 13 of PW4ENG A72–722, dated September 29, 2000, or Revision 1, dated June 7, 2001, within 500 cycles of the effective date of this AD, satisfy the initial inspection requirement.

**Repetitive Inspections**

(b) Thereafter, perform borescope inspections within 2,200 cycles-since-last-inspection, in accordance with the Accomplishment Instructions, On-Wing paragraphs 1 through 13, or Off-Wing paragraphs 1 through 13, of PW ASB No. PW4ENG A72–722, dated September 29, 2000, or Revision 1, dated June 7, 2001.

(1) If the presence of a crack needs to be confirmed, perform an ECI within five flight cycles.

(2) If the presence of a crack needs to be confirmed and the suspect crack indication extends from the knife edges to the disk radius directly adjacent to the spacer wall of the sixth or seventh stage as shown in Figures 2 and 3 of PW ASB No. PW4ENG A72–722, dated September 29, 2000, or Revision 1, dated June 7, 2001, the ECI inspection must be done before further flight.

(3) If the presence of a crack is confirmed, remove and replace with a serviceable HPC front drum rotor before further flight.

**Definition of Suspect Crack Indication**

(c) For the purposes of this AD, a suspect crack indication is defined as a response from the visual borescope inspection procedure that denotes the possible presence of a material discontinuity and requires interpretation to determine its significance.

**Alternative Methods of Compliance**

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

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

**Special Flight Permits**

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

**Documents That Have Been Incorporated by Reference**

(f) The inspections must be done in accordance with the following Pratt & Whitney Alert Service Bulletins (ASB's):

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| ASB PW4ENG A72–722 ..... Total pages: 17. | All ..... | Original ..... | September 29, 2000. |
| ASB PW4ENG A72–722 ..... | 1–4 ..... | 1 ..... | June 7, 2001. |
| | 5 ..... | Original ..... | September 29, 2001. |
| | 6 ..... | 1 ..... | June 7, 2001. |
| | 7–9 ..... | Original ..... | September 29, 2001. |
| | 10–11 ..... | 1 ..... | June 7, 2001. |
| | 12–16 ..... | Original ..... | September 29, 2001. |
| | 17 ..... | 1 ..... | June 7, 2001. |
| Total pages: 17. | | | |

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 Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**Effective Date**

(g) This amendment becomes effective on July 31, 2002.

Issued in Burlington, Massachusetts, on June 14, 2002.

**Francis A. Favara,**

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

[FR Doc. 02–15641 Filed 6–25–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NM–197–AD; Amendment 39–12788; AD 2002–13–01]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 airplanes, that requires an inspection of the galley

power feeder cable above the main cabin ceiling supports for damage caused by chafing. The amendment also requires repairing any damage on the outer cable jacket or primary insulation, installing a splice on the power feeder cable to remove damage, installing sleeving along a portion of the cable, installing standoffs for the cable, re-routing the galley power feeder cable, and testing the galley equipment, as applicable. The actions specified by this AD are intended to prevent future damage to the galley power feeder cable as well as to detect and correct existing damage to the galley power feeder cable, which could result in electrical arcing, possibly leading to damage to adjacent structures and to fire in the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective July 31, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 31, 2002.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** George Y. Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 airplanes was published in the **Federal Register** on April 5, 2002 (67 FR 16335). That action proposed to require an inspection of the galley power feeder cable above the main cabin ceiling supports for damage caused by chafing. The action also proposed to require repairing any damage on the outer cable jacket or primary insulation, installing a splice on the power feeder cable to remove damage, installing sleeving along a portion of the cable, installing standoffs for the cable, re-routing the galley power feeder cable, and testing the galley equipment, as applicable.

**Comments**

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

**Explanation of Changes Made to Proposal**

For clarification, the FAA has revised the definition of a ''general visual inspection'' in this final rule. We also have corrected a typographical error in the docket number specified in the proposed rule in the section containing the manufacturer's name.

**Conclusion**

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

**Cost Impact**

The FAA estimates that 17 airplanes of U.S. registry will be affected by the requirement to accomplish McDonnell Douglas Alert Service Bulletin MD90–24A046, Revision 02, dated March 26, 2001. We estimate that 22 airplanes of U.S. registry will be affected by the requirement to accomplish McDonnell Douglas Alert Service Bulletin MD90–24A047, Revision 01, dated July 31, 2000.

It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $1,020, or $60 per airplane.

It will take approximately 2 work hours per airplane to accomplish the required installation of sleeving along a portion of the cable, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the installation of sleeving on U.S. operators is estimated to be $2,040, or $120 per airplane.

It will take approximately 5 work hours per airplane to accomplish the required modification of the installation of the galley power feeder cables and re-routing of the cables, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification and re-routing of the cable on U.S. operators is estimated to be $6,600, or $300 per airplane.

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

**Regulatory Impact**

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

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2002–13–01 McDonnell Douglas:** Amendment 39–12788, Docket 2000–NM–197–AD.

*Applicability:* Model MD–90–30 airplanes, as listed in McDonnell Douglas Alert Service Bulletins MD90–24A046, Revision 02, dated March 26, 2001; and MD90–24A047, Revision 01, dated July 31, 2000; 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 (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 future damage to the galley power feeder cable as well as to detect and correct existing damage to the galley power feeder cable, which could result in electrical arcing, possibly leading to damage to adjacent structures and to fire in the airplane, accomplish the following:

**Inspection and Follow-On Actions**

(a) For McDonnell Douglas Model MD–90–30 airplanes as identified in McDonnell Douglas Alert Service Bulletin MD90–24A046, Revision 02, dated March 26, 2001: Within 90 days after the effective date of this AD, do a one-time general visual inspection of the galley power feeder cable located above the main cabin ceiling supports in the overwing area on the left side for damage caused by chafing—particularly near the ends of the ceiling supports—per the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD90–24A046, Revision 02, dated March 26, 2001.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

*Condition 1: Damage to Outer Cable Jacket or Primary Insulation*

(1) If any damage to the outer cable jacket or the primary insulation is found, prior to further flight, repair the scuffed jacket or insulation and modify the galley power feeder cable installation by installing sleeving over the wire assembly per the alert service bulletin.

*Condition 2: Damage to Power Feeder Cable Conductor*

(2) If any damage to the power feeder cable conductor is found, prior to further flight, repair the damaged cable by installing a splice at the damaged location, modify the galley power feeder cable installation by installing sleeving over the cable assembly, and do a functional test of the galley equipment per the alert service bulletin.

*Condition 3: No Damage*

(3) If no damage is found, prior to further flight, modify the galley power feeder cable installation by installing sleeving over the cable assembly per the alert service bulletin.

**Note 3:** Accomplishment of the applicable actions prior to the effective date of this AD per McDonnell Douglas Alert Service Bulletin MD90–24A046, dated July 31, 1997; or Revision 01, dated February 16, 1998; is acceptable for compliance with the requirements of paragraph (a) of this AD.

**Modification of Installation and Re-Routing of Power Feeder Cable**

(b) For McDonnell Douglas Model MD–90–30 airplanes, as identified in McDonnell Douglas Alert Service Bulletin MD90–24A047, Revision 01, dated July 31, 2000: Within one year after the effective date of this AD, modify the installation of the galley power feeder cables by installing standoffs and re-route the galley power feeder cable, as shown in Figure 1 of McDonnell Douglas Alert Service Bulletin MD90–24A047, Revision 01, dated July 31, 2000, per the alert service bulletin.

**Note 4:** Accomplishment of the applicable actions prior to the effective date of this AD per McDonnell Douglas Service Bulletin MD90–24–047, dated September 15, 1997, is acceptable for compliance with the requirements of paragraph (b) of this AD.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles 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, Los Angeles ACO.

**Note 5:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

**Special Flight Permits**

(d) 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**

(e) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A046, Revision 02, dated March 26, 2001; and McDonnell Douglas Alert Service Bulletin MD90–24A047, Revision 01, dated July 31, 2000; as applicable. 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 Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(f) This amendment becomes effective on July 31, 2002.

Issued in Renton, Washington, on June 14, 2002.

**Ali Bahrami,**

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

[FR Doc. 02–15660 Filed 6–25–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–233–AD; Amendment 39–12785; AD 2002–12–13]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 727 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that requires a review of maintenance records or a one-time test to determine if elevator hinge support ribs on the trailing edge of the horizontal stabilizer are made from a certain material, and follow-on repetitive inspections for corrosion or cracking of the elevator hinge support ribs, if necessary. For airplanes with the affected ribs installed, this AD eventually requires replacement of all affected ribs with new, improved ribs.

This action is necessary to prevent cracking of the elevator hinge support ribs, which could lead to vibration of the airframe during flight and consequent damage to the elevator and horizontal stabilizer, potentially resulting in loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective July 31, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 31, 2002.

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

**FOR FURTHER INFORMATION CONTACT:** *Technical Information:* Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2773; fax (425) 227–1181.

*Other Information:* Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: judy.golder@faa.gov. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 727 series airplanes was published in the **Federal Register** on November 28, 2001 (66 FR 59382). That action proposed to require a review of maintenance records or a one-time test to determine if elevator hinge support ribs on the trailing edge of the horizontal stabilizer are made from a certain material, and follow-on repetitive inspections for corrosion or cracking of the elevator hinge support ribs, if necessary. For airplanes with the affected ribs installed, the action also proposed to eventually require replacement of all affected ribs with new, improved ribs.

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter, an operator, notes how the proposed AD will affect its fleet but makes no request for any change to the proposed AD.

**Require Only Inspections or Extend Compliance Time for Replacement of Ribs**

One commenter believes that the adoption of the proposed AD at this stage would be premature. The commenter states that it is not aware of any instance of in-service or operational problems related to stress corrosion cracking in the elevator hinge support ribs. The commenter acknowledges the inherent potential for stress corrosion cracking of 7079-T6 material, as well as the potential for airframe vibration if the hinge support ribs no longer provide the required stiffness for the elevator support. However, the commenter points to the fact that, in more than 30 years of service of Model 727 series airplanes, ''no major irregularities'' have been found on airplanes with the subject ribs installed. The commenter states that, if the FAA determines that rulemaking is indeed necessary at this time, the proposed AD should be revised to require only repetitive inspections, with no requirement for replacement of the subject ribs with improved ribs. The commenter goes on to suggest that, if the FAA decides to require replacement of the subject ribs, the compliance time for such replacement should be extended from 48 months to 60 months after the effective date of this AD. The commenter explains that a compliance time of 60 months would be more consistent with the manufacturer's ability to deliver the necessary replacement part, and would allow the majority of operators to accomplish the rib replacement during a regularly scheduled ''D'' check, which would reduce the cost impact of the proposed AD on affected operators.

The FAA partially concurs. We do not concur that repetitive inspections alone will provide an acceptable level of safety for the affected airplane fleet. Mandating the replacement of subject elevator hinge support ribs is based on our determination that, in this case, long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than repetitive inspections. Repetitive inspections alone may not provide the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led us to consider placing less emphasis on inspections and more emphasis on design improvements. The replacement of elevator hinge support ribs required by this AD is consistent with these conditions.

However, we do concur with the commenter's request to extend the compliance time for the rib replacement from 48 months to 60 months. We find that the justification provided by the commenter is reasonable. Further, we find that repetitive inspections at the intervals required by this AD, along with adequate maintenance, will provide an acceptable level of safety over the 60-month compliance period. We have revised paragraph (d) of this final rule accordingly.

**Extend Compliance Time for Inspection**

Two commenters request that we extend the 180-day compliance time for the proposed inspection for corrosion or cracking of elevator hinge support ribs made from 7079-T6 material. Both commenters request extension of the compliance time to coincide with a regularly scheduled ''C'' check. One commenter states that a 180-day compliance time would be appropriate for airplanes on which the subject ribs have never been inspected, but requests a compliance time of 18 months or 4,000 flight hours (which would correspond to the industry standard for ''C'' checks) for airplanes on which the subject ribs have been inspected previously. This commenter concludes that previous zonal inspections, which many operators have been performing at three to six year intervals, have been adequate to ensure some degree of safety. The commenter bases its conclusion on the low incidence of cracked ribs with no flight control anomalies attributed to cracked ribs. The commenter also notes that the proposed AD would mandate inspections of the subject ribs significantly more frequently than specified by current maintenance programs. The second commenter also considers the proposed 180-day compliance time unduly restrictive considering the service history of the affected airplanes. The second commenter asserts that the proposed compliance time would add a significant cost burden for operators in the form of out-of-service costs and costs associated with gaining access and

closing up outside of a regularly scheduled maintenance visit.

We partially concur with the commenters' request. We do not concur that it is appropriate to extend the initial compliance time for the inspection for cracking or corrosion on all airplanes. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, as presented in the referenced service bulletin, but the degree of urgency associated with addressing the subject unsafe condition, as well as the nature of the unsafe condition. Given the potential hazards associated with stress corrosion cracking of multiple elevator hinge support ribs, we find that it is important for the subject ribs to be inspected in a timely manner, so that any cracks may be found and fixed. Therefore, for airplanes with multiple ribs made from 7079-T6 material, we find that the 180-day compliance time for the initial inspection is warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

However, we find that the compliance time may be extended somewhat for the initial inspection for cracking or corrosion on airplanes with no more than one rib made of 7079-T6 material per side of the horizontal stabilizer. For these airplanes, the potential for cracking of multiple ribs is low. Thus, we have determined that the initial inspection for cracking or stress corrosion may be deferred until 18 months after the effective date of this AD without jeopardizing the continued safety of the airplane fleet. Accordingly, paragraph (b) has been revised and paragraphs (b)(1) and (b)(2) have been added in this final rule.

**Extend Repetitive Inspection Interval**

Two commenters request that we extend the interval for the repetitive inspections for corrosion or cracking of all elevator hinge support ribs made from 7079-T6 material from every 180 days to every ''C'' check (i.e., approximately every 18 months). One commenter states that a previous AD, AD 77–18–06 R1, amendment 39–3048, requires repetitive inspections every 3,200 flight hours or 18 months for parts made from 7079-T6 material on the center section of the front spar fitting of the horizontal stabilizer. The commenter also refers to AD 75–09–04 R1, amendment 39–2142, stating that it requires repetitive inspections every 3,000 flight hours of the center section of the rear spar fitting of the horizontal stabilizer (which is made from 7079-T6 material). The other commenter refers to the satisfactory service history of Model 767 series airplanes with hinge support ribs made from 7079-T6 material as justification for extending the proposed inspection interval to correspond to the ''C'' check interval of the majority of operators. That commenter states that the proposed 180-day repetitive interval would necessitate special maintenance visits and increase the cost impact on affected operators.

We partially concur. With regard to the ADs that the commenter refers to as justification for extending the repetitive interval of this AD, we note that the repetitive intervals to which the commenter refers are only applicable under certain conditions. In this AD, we find that the proposed repetitive interval of 180 days is important to ensure that any crack on an affected rib will be found and fixed in a timely manner. If not found and fixed in a timely manner, propagation of cracks on multiple ribs could decrease the stiffness of the elevator support, resulting in vibration of the airframe during flight and consequent damage to the elevator and horizontal stabilizer, which could result in loss of controllability of the airplane.

However, we find that the repetitive interval may be extended somewhat for airplanes with no more than one rib made of 7079-T6 per side of the horizontal stabilizer. As discussed previously, for these airplanes, the potential for cracking of multiple ribs is low. Thus, we have determined that the repetitive inspections for cracking or stress corrosion may be performed on these airplanes at 18-month intervals without jeopardizing the continued safety of the airplane fleet. Paragraphs (b), (b)(1), and (b)(2) of this final rule have been revised accordingly.

**Allow Repair Per Structural Repair Manual**

One commenter requests that we revise paragraph (c) of the proposed AD, which specifies that any discrepancy must be repaired before further flight according to a method approved by the Manager of the FAA's Seattle Aircraft Certification Office (ACO) or an authorized Boeing Designated Engineering Representative (DER). The commenter states that the current Boeing 727 Structural Repair Manual (SRM) contains appropriate repair data for certain cracks of the hinge support ribs, and requests that we clarify that applicable repairs per the SRM are acceptable for compliance with paragraph (c) of the proposed AD. The commenter also states that Boeing should provide additional repairs for small flange or web cracks that will be acceptable in the interim until subject ribs are replaced.

We partially concur with the commenter's request. The Accomplishment Instructions of Boeing Alert Service Bulletin 727–55A0091, including Appendix A, dated August 16, 2001, refer to Boeing 727 SRM Chapter 55, Subject 55–10–4, as an acceptable source of service information for repair of ''some'' cracks. We find that repairs included in that chapter of the SRM are acceptable for compliance with this AD. However, for necessary repairs not included in that section, the repair must be accomplished according to a method approved by the Manager, Seattle ACO, or an authorized DER. Paragraph (c) of this AD has been revised accordingly, and a new Note 3 has been added to this final rule (and subsequent notes reidentified accordingly) to specify that the service bulletin refers to Boeing 727 SRM Chapter 55, Subject 55–10–4, as an acceptable source of service information for certain repairs.

With regard to the commenter's concern about flange and web cracks, the manufacturer has not provided us with any procedures for repair of such cracks, so we cannot evaluate such repairs. If procedures for such repairs are submitted to us as provided by paragraph (f) of this AD, we will consider approving them as an alternative method of compliance for paragraph (c) of this AD. No further change to the final rule is necessary in this regard.

**Require Repetitive Inspections and Replacement Only for Group 1**

One commenter requests that we revise the proposed AD to make the repetitive inspection and replacement requirements applicable only to airplanes listed in Group 1 in the referenced service bulletin. The commenter notes that airplanes in Group 1, which were delivered with elevator hinge support ribs made from 7079–T6 material installed at all 14 elevator station locations, are at a significantly higher risk to have multiple cracked ribs and consequent damage than are airplanes in Groups 2 and 3, which have only one or two subject ribs. The commenter concludes that there is no airworthiness concern for airplanes in Groups 2 and 3; thus, there is no justification for including them in the proposed AD.

We do not concur. As explained in the preamble of the proposed AD, airplanes in Groups 2 and 3 may have had ribs replaced after delivery with ribs made from 7079–T6 material, so

these airplanes may have more than ''one or two'' subject ribs. Further, even if only one subject rib is installed on each side of the horizontal stabilizer, failure of one of these ribs could lead to failure of adjacent ribs and result in the unsafe condition addressed by this AD. However, we acknowledged previously in this final rule that failure of multiple ribs is somewhat less likely on airplanes with no more than one subject rib on each side of the horizontal stabilizer. Thus, as explained above, we have extended the repetitive inspection interval to 18 months for airplanes with no more than one rib made of 7079–T6 material on each side of the horizontal stabilizer. No further change to the final rule is necessary in this regard.

**Explanation of Additional Change to Final Rule**

For clarification, we have made minor revisions to the service information citations in paragraph (a) of this final rule. These revisions are strictly editorial; no substantive change has been made.

**Conclusion**

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

**Cost Impact**

There are approximately 1,383 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 915 airplanes of U.S. registry will be affected by this AD.

This AD offers two alternatives for compliance with the requirement for an initial inspection to determine whether elevator hinge support ribs made from 7079–T6 material are installed. Estimates of the cost of these actions are provided below.

The review of maintenance records, which is one alternative for compliance, will take approximately 1 work hour per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this review is estimated to be $60 per airplane.

In lieu of the review of maintenance records (i.e., if the review of maintenance records is not sufficient to make a determination), the inspection of the ribs to determine if they are made from 7079–T6 material will take approximately 1 work hour per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection is estimated to be $60 per airplane.

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

Should an operator be required to accomplish the repetitive detailed inspections, these inspections will take approximately 13 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection, if required, will be $780 per airplane, per inspection cycle.

Should an operator be required to accomplish the replacement of the elevator hinge support ribs, it will take approximately 722 work hours per airplane for replacement of all ribs (on both the left- and right-hand sides of the airplane, excluding the time for gaining access and closing up), at an average labor rate of $60 per work hour. Required parts will cost approximately $70,000 per airplane. Based on these figures, the cost impact of the replacement, if required, will be $113,320 per airplane.

**Regulatory Impact**

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

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2002–12–13 Boeing:** Amendment 39–12785. Docket 2001–NM–233–AD.

*Applicability:* All Model 727 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) 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 cracking of the elevator hinge support ribs, which could lead to vibration of the airframe during flight and consequent damage to the elevators and horizontal stabilizer, potentially resulting in loss of controllability of the airplane, accomplish the following:

**One-Time Inspection**

(a) Within 180 days after the effective date of this AD, review the airplane's maintenance records to determine whether any elevator hinge support rib on the trailing edge of the horizontal stabilizer is made from 7079–T6 material; OR, if the material cannot be conclusively determined from the maintenance records, do a one-time electrical conductivity test of the elevator hinge support ribs to determine whether any are made from 7079–T6 material; according to Part 6, Section 51–00–00, Figure 20, of Boeing Document D6–48875, Boeing 727 Non Destructive Test Manual, dated December 5,

1999; and Table I, page 12 of Boeing Process Specification BAC 5946, Revision (AA), dated July 9, 2001.

(1) If no ribs are made from 7079–T6 material, no further action is required by this AD.

(2) If any ribs are made from 7079–T6 material, do paragraph (b) of this AD.

**Follow-on Repetitive Inspections**

(b) At the applicable times specified in paragraph (b)(1) or (b)(2) of this AD: Perform a detailed inspection for corrosion or cracking of all elevator hinge support ribs made from 7079–T6 material, according to Boeing Alert Service Bulletin 727–55A0091, including Appendix A, dated August 16, 2001.

**Note 2:** 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.''

(1) For airplanes with no more than one elevator hinge support rib made of 7079–T6 material on each side of the horizontal stabilizer: Do the initial inspection for cracking or stress corrosion within 18 months after the effective date of this AD, and repeat this inspection every 18 months, until paragraph (d) of this AD has been done.

(2) For airplanes with more than one elevator hinge support rib made of 7079–T6 material on either side of the horizontal stabilizer: Do the initial inspection for corrosion or cracking within 180 days after the effective date of this AD, and repeat this inspection every 180 days, until paragraph (d) of this AD has been done.

**Repair**

(c) If any corrosion or cracking is found during any inspection required by paragraph (b) of this AD: Before further flight, repair according to Boeing Alert Service Bulletin 727–55A0091, including Appendix A, dated August 16, 2001, as applicable; or according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. Where applicable repair procedures are not included in the section of the Boeing Structural Repair Manual referred to in the service bulletin, and the service bulletin specifies to write to Boeing for repair instructions, repair according to a method approved by the Manager, Seattle ACO, or according to 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 as required by this paragraph, the approval letter must specifically reference this AD.

**Note 3:** Boeing Alert Service Bulletin 727–55A0091, including Appendix A, dated August 16, 2001, refers to Boeing 727 Structural Repair Manual Chapter 55, Subject 55–10–4, as a source of service information for repair of certain cracks.

**Replacement**

(d) For airplanes on which any ribs made from 7079–T6 material are found: Within 60 months after the effective date of this AD, replace all elevator hinge support ribs made from 7079–T6 material with new, improved ribs, according to a method approved by the Manager, Seattle ACO, or according to 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 Manager's approval letter must specifically reference this AD. Such replacement terminates the repetitive inspections required by paragraph (b) of this AD.

**Spares**

(e) After the effective date of this AD, no one may install an elevator hinge support rib made from 7079–T6 material on any airplane.

**Alternative Methods of Compliance**

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

**Note 4:** 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**

(g) 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**

(h) Except as provided by paragraphs (c) and (d) of this AD, the actions shall be done in accordance with Part 6, Section 51–00–00, Figure 20, of Boeing Document D6–48875, Boeing 727 Non Destructive Test Manual, dated December 5, 1999; Table I, page 12 of Boeing Process Specification BAC 5946, Revision (AA), dated July 9, 2001; and Boeing Alert Service Bulletin 727–55A0091, including Appendix A, dated August 16, 2001; as applicable. Boeing Document D6–48875, Boeing 727 Non Destructive Test Manual, contains the following list of effective pages:

| Page title and number | Date shown on page |
|---|---|
| List of Effective Pages ..... Pages 1, 2, 2A | April 5, 2002 |

Boeing Process Specification BAC 5946 contains the following list of effective pages:

| Page number | Revision level shown on page | Date shown on page |
|---|---|---|
| Contents ..... Pages 2, 3 | (AA) ..... | July 9, 2001 |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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**

(i) This amendment becomes effective on July 31, 2002.

Issued in Renton, Washington, on June 12, 2002.

**Ali Bahrami,**

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

[FR Doc. 02–15366 Filed 6–25–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–69–AD; Amendment 39–12783; AD 2002–12–11]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model DHC–8–100, –200, and –300 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes, that requires revision of the applicable maintenance program manual, repetitive inspections for corrosion or cracking of the hook roller shafts of the flap carriage, and eventual replacement of the hook roller shafts with new or serviceable hook roller shafts. This replacement extends the interval for the repetitive inspections. This action is necessary to prevent cracking of the hook roller shafts of the flap carriage and consequent reduced structural integrity of the flap, which could result in jamming of the flap. This

action is intended to address the identified unsafe condition.

**DATES:** Effective July 31, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 31, 2002.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the 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:** Dan Parrillo, Aerospace Engineer, Airframe and Propulsion Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes was published in the **Federal Register** on March 21, 2002 (67 FR 13108). That action proposed to require revision of the applicable maintenance program manual; repetitive inspections for corrosion or cracking of the hook roller shafts of the flap carriage; and eventual replacement of the hook roller shafts with new or serviceable hook roller shafts, which would extend the interval for the repetitive inspections.

**Comments**

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

**Explanation of Change to Final Rule**

The FAA has revised paragraph (a) of the final rule to clarify that the maintenance manual revision must be accomplished according to the applicable temporary revision listed in paragraph (a)(1), (a)(2), or (a)(3) of the AD.

**Conclusion**

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

**Cost Impact**

The FAA estimates that 183 airplanes of U.S. registry will be affected by this AD.

It will take approximately 4 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required inspection on U.S. operators is estimated to be $43,920, or $240 per airplane, per inspection cycle.

It will take approximately 4 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $460 per airplane. Based on these figures, the cost impact of the required replacement on U.S. operators is estimated to be $128,100, or $700 per airplane.

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

**Regulatory Impact**

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

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2002–12–11 Bombardier, Inc.** (Formerly de Havilland, Inc.): Amendment 39–12783. Docket 2001–NM–69–AD.

*Applicability:* Model DHC–8–100, –200, and –300 series airplanes; serial numbers 3 through 555 inclusive; certificated in any category.

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

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

To prevent cracking of the hook roller shafts of the flap carriage and consequent reduced structural integrity of the flap, which could result in jamming of the flap, accomplish the following:

**Revision of Maintenance Program Manual**

(a) Within 30 days after the effective date of this AD, accomplish paragraph (a)(1), (a)(2), or (a)(3) of this AD according to the service information specified, as applicable.

(1) For Model DHC–8–100 series airplanes: Insert de Havilland Inc. Dash 8 Airworthiness Limitations List Temporary Revisions (TRs) AWL–75 and AWL–76, both dated July 14, 2000, into de Havilland Inc. Dash 8 Series 100 Maintenance Program Manual PSM 1–8–7.

(2) For Model DHC–8–200 series airplanes: Insert de Havilland Inc. Airworthiness Limitations List TR AWL 2–19, dated July 14, 2000, into de Havilland Inc. Dash 8 Series 200 Maintenance Program Manual PSM 1–82–7.

(3) For Model DHC–8–300 series airplanes: Insert de Havilland Inc. Airworthiness Limitations List TR AWL 3–83, dated July 14, 2000, into de Havilland Inc. Dash 8 Series 300 Maintenance Program Manual PSM 1–83–7.

**Repetitive Inspections**

(b) Do a detailed inspection for corrosion or cracking of the hook roller shafts of the flap carriage, at the times specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable; and according to the service information in paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable.

**Note 2:** 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.''

(1) For Model DHC–8–100 series airplanes: For Pre Mod 8Q101103 roller shafts having part number (P/N) 85750362–103 or 85750362–105, do the initial inspection at the compliance time specified in the ''Threshold'' column of the table in de Havilland Inc. Airworthiness Limitations List TRs AWL–75 and AWL–76, both dated July 14, 2000, or within 12 months after the effective date of this AD, whichever occurs later; according to de Havilland Inc. Dash 8 Series 100 Maintenance Program Manual PSM 1–8–7. Thereafter, repeat the inspection at the applicable interval specified in the ''Initial Interval'' column of the table in TR AWL–75 and AWL –76, until the airplane reaches the applicable threshold listed in the ''Repeat Cut-In'' column of the table in TR AWL–75 and AWL–76. Thereafter, repeat the inspections at the applicable interval listed in the ''Repeat Interval'' column of the table in TR AWL–75 and AWL –76, until paragraph (c) of this AD has been accomplished on all affected hook roller shafts. Where the TR specifies compliance intervals in ''flights,'' for the purposes of this AD, ''flights'' means ''flight cycles.''

(2) For Model DHC–8–200 series airplanes: For Pre Mod 8Q101103 hook roller shafts having part number (P/N) 85750362–103 or 85750362–105, do the initial inspection at the compliance time specified in the ''Threshold'' column of the table in de Havilland Inc. Airworthiness Limitations List TR AWL 2–19, dated July 14, 2000, or within 12 months after the effective date of this AD, whichever occurs later; according to de Havilland Inc. Dash 8 Series 200 Maintenance Program Manual PSM 1–82–7. Thereafter, repeat the inspection at the applicable interval specified in the ''Initial Interval'' column of the table in TR AWL 2–19, until the airplane reaches the applicable threshold listed in the ''Repeat Cut-In'' column of the table in TR AWL 2–19. Thereafter, repeat the inspections at the applicable interval listed in the ''Repeat Interval'' column of the table in TR AWL 2–19, until paragraph (c) of this AD has been accomplished on all affected hook roller shafts. Where the TR specifies compliance intervals in ''flights,'' for the purposes of this AD, ''flights'' means ''flight cycles.''

(3) For Model DHC–8–300 series airplanes: For Pre Mod 8Q101103 hook roller shafts having part number (P/N) 85750362–103 or 85750362–105, do the initial inspection at the compliance time specified in the ''Threshold'' column of the table in de Havilland Inc. Airworthiness Limitations List TR AWL 3–83, or within 12 months after the effective date of this AD, whichever occurs later; according to de Havilland Inc. Dash 8 Series 300 Maintenance Program Manual PSM 1–83–7, dated July 14, 2000. Thereafter, repeat the inspection at the applicable interval specified in the ''Initial Interval'' column of the table in TR AWL 3–83, until the airplane reaches the applicable threshold listed in the ''Repeat Cut-In'' column of the table in TR AWL 3–83. Thereafter, repeat the inspections at the applicable interval listed in the ''Repeat Interval'' column of the table in TR AWL 3–83 until paragraph (c) of this AD has been accomplished on all affected hook roller shafts. Where the TR specifies compliance intervals in ''flights,'' for the purposes of this AD, ''flights'' means ''flight cycles.''

**Replacement**

(c) At the applicable time specified in paragraph (c)(1) or (c)(2) of this AD, replace hook roller shafts having P/N 85750362–103 or 85750362–105 with new or serviceable hook roller shafts having P/N 85750362–107, according to Sections 57–50–44 and 57–50–53 of the de Havilland Inc. Dash 8 Aircraft Maintenance Manual, as applicable. Replacement of all hook roller shafts, P/N 85750362–103 or 85750362–105, with new hook roller shafts, P/N 85750362–107, ends the repetitive inspections at the intervals required by paragraph (b) of this AD.

(1) For hook roller shafts on which any corrosion or crack is found during any inspection per paragraph (b) of this AD: Do the replacement before further flight.

(2) For uncracked or uncorroded hook roller shafts: Do the replacement within 20,000 flight cycles or 5 years after the effective date of this AD, whichever is first.

**Post-Replacement Inspections**

(d) Following the replacement of hook roller shafts according to paragraph (c) of this AD, do the Structural Inspection Program for the hook roller shafts of the flap carriage, as specified in paragraph (d)(1), (d)(2), or (d)(3) of this AD, as applicable.

(1) For Model DHC–8–100 series airplanes: Using the criteria for Mod 8Q101103 hook roller shafts having P/N 85750362–107, do the initial inspection at the compliance time specified in the ''Threshold'' column of the table in de Havilland Inc. Airworthiness Limitations List TR AWL–75 and AWL ''76, both dated July 14, 2000, according to de Havilland Inc. Dash 8 Series 100 Maintenance Program Manual PSM 1–8–7. Thereafter, repeat the inspection at the applicable interval specified in the ''Initial Interval'' column of the table in TRs AWL–75 and AWL–76, until the airplane reaches the applicable threshold listed in the ''Repeat Cut-In'' column of the table in TRs AWL–75 and AWL–76. Thereafter, repeat the inspections at the applicable interval listed in the ''Repeat Interval'' column of the table in TRs AWL–75 and AWL–76. Where the TR specifies compliance intervals in ''flights,'' for the purposes of this AD, ''flights'' means ''flight cycles.''

(2) For Model DHC–8–200 series airplanes: Using the criteria for Mod 8Q101103 hook roller shafts having P/N 85750362–107, do the initial inspection at the compliance time specified in the ''Threshold'' column of the table in de Havilland Inc. Airworthiness Limitations List TR AWL 2–19, dated July 14, 2000, according to de Havilland Inc. Dash 8 Series 200 Maintenance Program Manual PSM 1–82–7. Thereafter, repeat the inspection at the applicable interval specified in the ''Initial Interval'' column of the table in TR AWL 2–19, until the airplane reaches the applicable threshold listed in the ''Repeat Cut-In'' column of the table in TR AWL 2–19. Thereafter, repeat the inspections at the applicable interval listed in the ''Repeat Interval'' column of the table in TR AWL 2–19. Where the TR specifies compliance intervals in ''flights,'' for the purposes of this AD, ''flights'' means ''flight cycles.''

(3) For Model DHC–8–300 series airplanes: Using the criteria for Mod 8Q101103 hook roller shafts having P/N 85750362–107, do the initial inspection at the compliance time specified in the ''Threshold'' column of the table in de Havilland Inc. Airworthiness Limitations List TR AWL 3–83, dated July 14, 2000, according to de Havilland Inc. Dash 8 Series 300 Maintenance Program Manual PSM 1–83–7. Thereafter, repeat the inspection at the applicable interval specified in the ''Initial Interval'' column of the table in TR AWL 3–83, until the airplane reaches the applicable threshold listed in the ''Repeat Cut-In'' column of the table in TR AWL 3–83. Thereafter, repeat the inspections at the applicable interval listed in the ''Repeat Interval'' column of the table in TR AWL 3–83. Where the TR specifies compliance intervals in ''flights,'' for the purposes of this AD, ''flights'' means ''flight cycles.''

**Alternative Methods of Compliance**

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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 3:** 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**

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

**Incorporation by Reference**

(g) The maintenance program manual revision shall be done in accordance with de Havilland Inc. Dash 8 Airworthiness Limitations List Temporary Revision AWL–75, dated July 14, 2000; de Havilland Inc. Dash 8 Airworthiness Limitations List Temporary Revision AWL–76, dated July 14, 2000; de Havilland Inc. Airworthiness Limitations List Temporary Revision AWL 2–19, dated July 14, 2000; and de Havilland Inc. Airworthiness Limitations List Temporary Revision AWL 3–83, dated July 14, 2000; as applicable. 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., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, 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 4:** The subject of this AD is addressed in Canadian airworthiness directive CF–1999–10R2, dated September 12, 2000.

**Effective Date**

(h) This amendment becomes effective on July 31, 2002.

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

**Ali Bahrami,**

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

[FR Doc. 02–15367 Filed 6–25–02; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 310

**[Docket Nos. 76N–0080 and 00N–1610]**

**RIN 0910–AC12**

## Digoxin Products for Oral Use; Revocation of Conditions for Marketing

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is revoking the regulation establishing conditions for marketing digoxin products for oral use. This regulation is no longer necessary because the products, which are new drugs, can be regulated under the approval process for new drug applications (NDAs) and abbreviated new drug applications (ANDAs) as set forth in the Federal Food, Drug, and Cosmetic Act (the act).

**DATES:** This rule is effective July 26, 2002. FDA does not plan to take regulatory action against currently marketed unapproved digoxin elixir products before June 28, 2004. Any unapproved digoxin elixir introduced after June 26, 2002, will be subject to regulatory action on July 26, 2002. Any unapproved digoxin tablet will be subject to regulatory action on July 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of November 24, 2000 (65 FR 70538), FDA proposed to revoke § 310.500 (21 CFR 310.500), which established conditions for marketing digoxin products for oral use (tablets and elixir). The regulation: (1) Declared all digoxin products for oral use (tablets and elixir) to be new drugs, (2) required submission of ANDAs and bioavailability tests for all oral digoxin products (the requirement for the submission of ANDAs was stayed indefinitely (41 FR 43135, September 30, 1976)), (3) required a mandatory FDA certification program for digoxin tablets based on dissolution testing by the National Center for Drug Analysis, (4) required a recall of any previously marketed batch of digoxin tablets found to fail United States Pharmacopeia (USP) dissolution specifications, and (5) set forth a labeling requirement for all oral digoxin products.

In the preamble to the proposed rule, FDA described actions that have occurred since § 310.500 was published that render the regulation unnecessary. The agency discussed the 1997 approval of NDA 20–405 for Lanoxin (digoxin) Tablets and described the indications for the tablets, which differ from the indications for oral digoxin drug products set forth in § 310.500. The agency explained that because of the approval of NDA 20–405, digoxin tablets are now eligible for ANDAs under section 505 of the act (21 U.S.C. 355).

The agency also noted that the dissolution requirements specified in § 310.500 are no longer used as standards in the certification program and are therefore obsolete. The agency concluded that regulation of these products under batch certification was no longer warranted.

The proposed rule referenced a companion notice published elsewhere in the **Federal Register** of November 24, 2000 (65 FR 70573), reaffirming the new drug status of oral digoxin products and requiring approved applications for marketing. In that notice, FDA lifted the stay for submitting ANDAs for digoxin products for oral use.

### II. Comments and the Agency's Response

Interested persons were given until February 22, 2001, to submit comments on the proposal. FDA received comments from four manufacturers of drug products subject to the proposal.

(Comment 1) Three of the four submitted comments agreed that the agency should revoke § 310.500. One comment identified several public health reasons to revoke § 310.500. Those reasons are described in section II of this document and incorporated into the agency's response to the one comment that opposed revocation of § 310.500.

*A. Opposition to Proposed Rule*

(Comment 2) One comment opposed the agency's proposed rule to revoke § 310.500, contending that the batch certification procedure is sufficient for FDA to regulate digoxin tablets and that the proposed rule is inadequate because FDA failed to identify a public health reason or change of facts or circumstances to justify revoking its regulation of digoxin tablets under batch certification.

FDA disagrees with this comment. The integrity of the batch certification process, the principal concern of the comment, is not the relevant issue. The relevant issue is whether the certification procedure is still warranted in light of new information or changing circumstances. FDA concludes it is not warranted and, as explained in section II of this document, has determined that revocation of § 310.500 is rationally related to FDA's statutory obligation to ensure that marketed oral digoxin drug products are safe, effective, and properly labeled as reflected by current scientific knowledge and information.

In its November 2000 proposed rule and a companion notice published in the same issue of the **Federal Register**,

FDA described the reasons for the agency's plan to revoke § 310.500. As discussed in section II of this document, the agency believes those reasons are still valid and that revocation of the regulation is appropriate and required under the circumstances.

As noted in the proposed rule and companion notice, along with other prior notices referenced in the proposed rule, in 1974 FDA established the conditions for marketing oral digoxin drug products in § 310.500 because of safety concerns with digoxin products on the market. Studies had shown clinically significant differences in bioavailability of certain oral digoxin products. This variability was a major concern because of the drug's narrow therapeutic index and the potential risk presented to patients using digoxin products of varying bioavailability. Therefore, FDA established the regulations to provide a systematic regulatory approach to ensure uniformity of marketed oral digoxin products.

The conditions for marketing included, among other things, requirements for submission of ANDAs, a batch certification program for digoxin tablets based on dissolution testing, and labeling requirements for all oral digoxin drug products. The requirement for ANDAs was later stayed pending resolution of the agency's ANDA policy. Absent submission of ANDAs, the batch certification program was the only preclearance requirement for digoxin tablets. The batch certification program was not intended to be a permanent solution to the problem of digoxin variability, but a stopgap measure to bring the potential for a serious health problem under control.

In that 1974 regulation, the agency also announced its determination that digoxin products for oral use are new drugs within the meaning of section 201(p) of the act (21 U.S.C. 321(p)). Because of the need for an optimal regulatory program to ensure the uniformity of oral digoxin drug products, FDA has, over the years, considered various approaches to bring digoxin into the new drug approval system.

The approval of NDA 20-405 for Lanoxin Tablets represented the first step in regulating all oral digoxin products under the requirements of section 505 of the act and the corresponding regulations. Approval of that NDA was also important because it provided data to help establish in vivo bioavailability and bioequivalence standards for oral digoxin drug products.

The approval of NDA 20–405 and the new information that emerged from the agency's review of the NDA provide a rational basis for the agency's actions to revoke § 310.500. Because the agency has approved an NDA for digoxin tablets, oral digoxin drug products are no longer covered by the exemptions set forth in Compliance Policy Guide (CPG) 7132c.02. That CPG provides priorities for regulating marketed new drugs without approved NDAs or ANDAs, such as oral digoxin products regulated under § 310.500.

As noted in one comment, FDA's decision to revoke § 310.500 is also supported by safety concerns related to the differences in labeling of the Lanoxin drug product and the labeling required under § 310.500. FDA approved NDA 20–405 for treatment of mild to moderate heart failure and for atrial fibrillation. The labeling of § 310.500 provides for use of digoxin in congestive heart failure (all degrees), atrial fibrillation, atrial flutter, paroxysmal atrial tachycardia, and cardiogenic shock.

The labeled indications for new drugs, such as oral digoxin drug products, must be supported by substantial evidence derived from adequate and well-controlled investigations, including clinical investigations. (See section 505(d) of the act (21 U.S.C. 355(d) and §§ 314.126, 201.56, and 201.57 (21 CFR 314.126, 201.56, and 201.57).) Labeling indications that are not supported by adequate and well-controlled studies are false and misleading, in violation of section 502(a) of the act (21 U.S.C. 352(a)).

Except for the data to support the two indications approved in NDA 20-405, the agency is not aware of any adequate and well-controlled studies to support the indications for use in § 310.500. Thus, the labeling of oral digoxin as set forth in § 310.500 is outdated and does not reflect current scientific and medical information about oral digoxin. Moreover, marketing of oral digoxin drug products with labeling described in § 310.500 could present a risk to patients because substantial scientific evidence to establish the safety and effectiveness of all of the indications in that labeling has not been established.

In addition, the criteria in § 310.500 are not current because the dissolution requirements specified in that regulation are no longer used as standards in the certification program. The dissolution requirements in § 310.500 differ from those in the current official U.S.P. monograph for oral digoxin tablets that FDA considers scientifically appropriate. Therefore, the dissolution requirements specified in § 310.500 for digoxin tablets are obsolete.

Furthermore, as described in a comment, § 310.500 lacks the uniform standards of the new drug approval system that ensure predictable bioavailability for oral digoxin products. Digoxin is a potent drug with a narrow therapeutic index. Slight variations in bioavailability can result in toxicity or loss of effect. Formulation and manufacturing controls are critical to the safe and effective use of oral digoxin drug products. Review of oral digoxin through the new drug approval process is necessary to provide adequate evidence of safety and substantial evidence of effectiveness, as well as adequate information about formulation and manufacturing procedures.

In addition to approval requirements under the new drug approval system, all oral digoxin products must be subject to the same postmarketing requirements so that changes that may affect the safety or effectiveness of the products can be monitored. Sponsors of products not approved through the new drug approval process, such as oral digoxin products under § 310.500, may reformulate their products or make manufacturing changes without seeking FDA approval. Such changes may affect bioavailability and hence may affect the safety or effectiveness of the products.

Additionally, although manufacturers of such unapproved products are required under 21 CFR 310.305 to report adverse events that are serious and unexpected, they are not required to report all adverse events associated with drug use. In contrast, manufacturers of approved new drug products are required to report all adverse events under 21 CFR 314.80. Consequently, adverse drug events that may reflect problems with the safety or effectiveness of oral digoxin products may not be reported.

Moreover, allowing oral digoxin products to be marketed under § 310.500 and the new drug approval process creates confusion in the marketplace regarding the substitutability or interchangeability of the drug products. Products marketed under § 310.500 and those approved under the new drug approval system may have differences in bioavailability. Furthermore, marketed oral digoxin products cannot be considered to be therapeutically equivalent, and therefore substitutable, unless equivalence is demonstrated through appropriate bioequivalence studies. Regulating all oral digoxin drug products under the same approval

process would eliminate those safety concerns.

As discussed in section I of this document and in the November 24, 2000, proposed rule and its companion notice published in the same issue of the **Federal Register**, the conditions established in § 310.500 for marketing oral digoxin products either are obsolete or no longer warranted. Because of the approval of the NDA for digoxin tablets and the new drug status of oral digoxin drug products, all oral digoxin products can and must be regulated under the new drug approval process for NDAs and ANDAs as set forth in section 505 of the act. Regulation through this process protects the public health by ensuring the safety and efficacy of each oral digoxin drug product. Therefore, the agency is revoking that regulation.

*B. Requests for Extension of Time*

As proposed, the final rule would become effective 30 days after its date of publication in the **Federal Register**.

(Comment 3) Three comments stated that additional time is needed to prepare, submit, and obtain approval of an NDA.

1. Digoxin Elixir

Two comments from manufacturers of digoxin elixir requested a 2-year compliance period. One comment, characterizing digoxin elixir as medically necessary, noted that there are only two manufacturers of digoxin elixir drug products and expressed concern that a shortage of digoxin elixir drug products may occur if such products were removed from the market 30 days after publication of the final rule in the **Federal Register**. The comment further indicated that preparation of an application for digoxin elixir is complicated by the fact that there is no reference listed drug for digoxin elixir in FDA's ''Approved Drug Products with Therapeutic Equivalence Evaluations'' (Orange Book), and therefore, no guidance is currently available from the agency on which to base a submission for digoxin elixir drug products.

Digoxin elixir is a medically necessary dosage form. It is used primarily in the pediatric population for the treatment of atrial fibrillation and congestive heart failure, both serious and potentially life-threatening diseases/conditions. Available alternative therapies are not approved for treating atrial fibrillation and congestive heart failure in the pediatric population. Such therapies are limited in their use because of toxicities, lack of safety and efficacy data in the pediatric population, and/or lack of a pediatric formulation allowing for consistent administration to children. There should not be a disruption in the marketplace for patients who need digoxin elixir. In order to protect the public health, FDA plans to exercise its enforcement discretion and not take regulatory action against currently marketed unapproved digoxin elixir products before June 28, 2004. This should allow sufficient time for a manufacturer to conduct the required tests, evaluate the data, and prepare and submit a new drug application to FDA. After that date, any digoxin elixir drug product on the market without an approved NDA or ANDA will be subject to regulatory action.

2. Digoxin Tablets

A manufacturer of digoxin tablets contends that FDA must extend the effective date of the final rule for at least 2 years to allow current producers and marketers of the drug products subject to the certification program to prepare, submit, and obtain an approved new drug application.

a. *Lack of notice.* In its comments, the manufacturer implies that the firm was not aware of FDA's intent to revoke § 310.500. (The comment's allegation that the proposed rule was issued to settle a lawsuit is spurious. The agency was preparing the proposed rule long before the party to that suit even approached the agency.)

The proposed rule itself provides reasonable notice of the agency's intent. The manufacturer has had more than a year in which to continue marketing under § 310.500 and, at the same time, pursue approval of an ANDA.

Moreover, a reasonably observant member of the drug industry would have known for a number of years that FDA intended to revoke § 310.500 and that applications approved through the new drug approval process would be required. For example, articles in the trade press have announced the agency's intention to require approval of oral digoxin through the new drug approval process. (See e.g., F–D–C Reports, July 6, 1992 at 7.) NDA 20–405 for Lanoxin (digoxin) Tablets was approved in September 1997. The approval was published in FDA's ''Approved Drug Products with Therapeutic Equivalence Evaluations,'' and also was reported in the trade press. (See e.g., *F–D–C Reports*, October 6, 1997 at T&G–2.) Certainly since that time, if not many years before, the drug industry has known that FDA would change its approach for regulating oral digoxin products and that the agency would take action to revoke § 310.500.

b. *Takings under the fifth amendment.* The manufacturer argues that if its digoxin drug product is removed from the market 30 days after publication of the final rule in the **Federal Register**, the potential loss to its company would be substantial and could constitute a ''taking'' for which the Federal Government could be financially liable. The manufacturer did not submit any evidence or analysis to support its views.

FDA disagrees that this final rule effects a taking in violation of the fifth amendment of the United States Constitution. The Supreme Court has developed three factors to consider in assessing whether a regulatory taking has occurred: (1) The character of the governmental action, (2) its economic impact, and (3) its interference with reasonable investment-backed expectations. (See *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. 986, 1005 (1984).)

The force of any one of these factors may be ''so overwhelming * * * that it disposes of the taking question'' (*Ruckelshaus*, 467 U.S. at 1005) (finding interference with reasonable investment-backed expectations by use of trade secret information in pesticide approval process to be decisive). So, for example, if the economic impact is to rob real property of ''all economically beneficial uses,'' the regulation effects a taking (*Lucas* v. *South Carolina Coastal Council*, 112 S. Ct. 2886, 2899 (1992) emphasis in original). Regulations that cause a temporary denial of property use, however, are not subject to such ''per se'' rules but entail complex factual assessments of the purposes and economic effects of government actions. See *Tahoe-Sierra Preservation Council* v. *Tahoe Regional Planning Agency*, No. 00–1167, 2002 WL 654431 (U.S. April 23, 2002). When examined in light of these three factors, FDA's revocation of § 310.500 clearly does not effect a compensable taking under the fifth amendment of the Constitution.

i. *Character of the governmental action.* With respect to the first factor, courts are more likely to find a taking when the interference with property can be characterized as a physical invasion by the Government (e.g. *United States* v. *Causby*, 328 U.S. 256, 261–62 (1946) (characterizing Government's use of flight path just over property as physical invasion)) than when the interference is caused by a regulatory program that ''adjust[s] the benefits and burdens of economic life to promote the common good.'' (*See Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978).) Courts have accorded particular deference to governmental action taken

to protect the public interest in health, safety, and welfare. (See *Keystone Bituminous Coal Ass'n* v. *DeBenedictis*, 480 U.S. 470, 488 (1987).)

In this case the governmental action is associated with a regulatory program designed to protect the health and safety of the public. Revocation of § 310.500 is intended to ensure that digoxin drug products on the market meet the current safety and efficacy product approval standards and are regulated in the same manner as other drug products under the act. As such, it does not constitute governmental action that would be considered a taking.

ii. *Economic impact.* The second factor to consider is the economic impact of the governmental action. ''There is no fixed formula to determine how much diminution in market value is allowable without the fifth amendment coming into play'' (*Florida Rock Indus., Inc.* v. *United States*, 791 F.2d 893, 901 (Fed. Cir. 1986), cert. denied, 479 U.S. 1053 (1987)). It is clear, however, that a regulation's economic impact may be great without rising to the level of a taking. (*See Pace Resources Inc.* v. *Shrewsbury Township*, 808 F.2d 1023, 1031 (3d Cir.), cert. denied, 482 U.S. 906 (1987) (no taking even given reduction in value from $800,000 to $60,000); *Village of Euclid* v. *Ambler Realty Co.*, 272 U.S. 365 (1926) (no taking despite 75 percent diminution in value).) Mere denial of the most profitable or beneficial use of property does not require a finding that a taking has occurred. (*See Florida Rock Indus., Inc.* v. *United States*, 791 F.2d 893, 901 (Fed. Cir. 1986), cert. denied 479 U.S. 1053 (1987); see also *Andrus* v. *Allard*, 444 U.S. 51, 66 (1979).)

In assessing whether a regulation effects a taking, the Supreme Court has considered whether the regulation denies an owner the ''economically viable'' use of its property. See, e.g., *Keystone*, 480 U.S. at 499. This analysis involves looking not just at what has been lost, but at the whole ''bundle'' of property rights. *Andrus* v. *Allard*, 444 U.S. at 65–66. Courts focus on the remaining uses permitted and the residual value of the property. *Pace Resources*, 808 F.2d at 1031. Although it is undeniable that compliance with these regulations will cost money and may mean that certain product names must be altered, companies will not be denied the economically viable use of their property.

By revoking the regulation, the agency is not taking away the ability of manufacturers to market digoxin drug products. The one manufacturer that might be affected does not complain in its comments that it would be unable to produce digoxin, but that it would face ''severe difficulty re-entering the market and re-establishing its position after an absence which could span a year or more while waiting for FDA to approve an NDA or ANDA.'' The manufacturer may submit an NDA or ANDA and then market its digoxin drug product after approval. It is possible that this could be done with little or no interruption in marketing. Therefore, the manufacturer has ''remaining uses'' of its property and does not suffer loss of ''economically viable use'' of property. (*See Pace Resources*, 808 F. 2d at 1031; and Keystone, 480 U.S. at 499.) Consequently, this factor also does not support a conclusion that revocation of the regulatory provision is a taking.

iii. *Investment-backed expectation.*The final factor to consider is whether a company has a reasonable investment-backed expectation in continuing to use the property at issue. To be reasonable, expectations must take into account the power of the State to regulate in the public interest. (*See Pace Resources*, 808 F.2d at 1033.) Reasonable expectations must also take into account the regulatory environment, including the foreseeability of changes in the regulatory scheme. ''In an industry that long has been the focus of great public concern and significant government regulation,'' *Monsanto*, 467 U.S. at 1008, the possibility is substantial that there will be additional regulatory requirements. ''Those who do business in the regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end.'' (*See Connolly* v. *Pension Benefit Guarantee Corp.*, 475 U.S. 211, 227 (1986).)

The manufacturer is a regulated body and, as such, has been aware from the time it began manufacturing digoxin that the regulatory scheme could be modified. As described in section II.B.2.a of this document, the manufacturer has had notice for many years that the regulatory scheme in § 310.500 would be changed. As with the other factors, analysis of this factor establishes that revoking § 310.500 is not a taking under the fifth amendment.

When examined in light of these three factors, FDA's revocation of § 310.500 clearly does not effect a compensable taking under the fifth amendment of the Constitution.

c. *Market disruption.* Contrary to the comment's assertion, FDA does not believe that a disruption in the marketplace of digoxin tablets will occur if, should it be necessary, an unapproved digoxin tablet product supplying from 15 to 20 percent of the market is taken off the market. As the comment recognizes, there are two other manufacturers of digoxin tablets, holders of approved NDAs. FDA believes that these manufacturers are capable of satisfying an increased demand for digoxin tablets.

d. *Levothyroxine sodium.* In further support of its contention that FDA extend the effective date of the final rule, the comment alleges that the digoxin tablet drug products are in a situation similar to that in which sponsors of levothyroxine sodium were allowed a minimum of 3 years to obtain approved NDAs. The comment contends that FDA should accord comparable time for completion and review of digoxin NDAs.

The agency's handling of levothyroxine sodium does not provide a necessary precedent for setting an effective date for approval of digoxin tablet drug products. The facts involving digoxin tablets and levothyroxine sodium differ in at least two significant ways. First, the **Federal Register** notice of August 14, 1997 (62 FR 43535) (announced that orally administered drug products containing levothyroxine sodium are new drugs and announced the conditions for marketing the products), was the first time FDA issued any public announcement of the new drug status of levothyroxine sodium products. By contrast, in the **Federal Register** of November 24, 2000 (65 FR 70573), FDA reaffirmed the agency's 1974 determination that digoxin products for oral use are new drugs requiring approved NDAs. Second, and most importantly, when FDA published the notice on levothyroxine sodium drug products, there were no approved NDAs for the products. When FDA published the proposed rule on digoxin, on the other hand, there were two approved products on the market for digoxin tablets under NDA 20–405 and ANDA 40–282. Because FDA determined that levothyroxine sodium drug products are medically necessary, sponsors of the products were allowed 3 years to obtain approved NDAs. In contrast, while digoxin tablets may be medically necessary, there is no medical necessity for unapproved digoxin tablets. Unapproved digoxin tablets may be indicated for serious cardiac conditions, as the comment claims, but there are approved digoxin tablets in sufficient quantity to meet the market demand.

To summarize, the comment has set forth no sufficient reason to justify an extension. Industry has been on notice for a number of years that § 310.500 would be revoked and that applications approved through the new drug

procedures would be required. It is the manufacturer's responsibility to prove the safety and effectiveness of its product(s).

**III. Implementation Plan**

*A. Digoxin Elixir*

In order to protect the public health, FDA plans to exercise its enforcement discretion and not take regulatory action against currently marketed unapproved digoxin elixir products before June 28, 2004. Any unapproved digoxin elixir introduced after June 26, 2002, will be subject to regulatory action when this rule becomes effective on July 26, 2002.

*B. Digoxin Tablets*

Any unapproved digoxin tablet will be subject to regulatory action when this rule becomes effective on July 26, 2002.

**IV. Analysis of Impacts**

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize the benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). Under the Regulatory Flexibility Act, unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the agency must analyze regulatory options that would minimize any significant impact of a rule on small entities.

The agency has reviewed this final rule and determined that it is consistent with the regulatory philosophy and principles identified in the Executive order and these two statutes. The Unfunded Mandates Reform Act of 1995 does not require FDA to prepare a statement of costs and benefits for the final rule because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $110 million. No further analysis is required under the Regulatory Flexibility Act because the agency has determined that this final rule will not have a significant effect on a substantial number of small entities.

As mentioned in the proposed rule, several studies have indicated a significant variation in the bioavailability of digoxin products for oral use. FDA published the January 1974 regulation that established conditions for marketing such products, including a mandatory batch certification program for digoxin tablets. In the proposed rule, FDA described actions that have occurred since that regulation was published that render the January 1974 regulation unnecessary. Therefore, under this final rule, manufacturers of digoxin products will be required to obtain an approved marketing application to enter or remain on the market.

In the proposed rule, FDA noted that one of the manufacturers of digoxin tablets had not already obtained an NDA or ANDA and would need to obtain an ANDA to remain on the market. In addition, the two manufacturers of digoxin elixir would need to obtain approved applications. In the proposed rule, the agency calculated a cost of submitting either an ANDA or 505(b)(2) application, based on an estimate of 480 hours to complete the necessary paperwork.

One comment disagreed with the estimate of 480 hours, contending it to be a gross underestimate of the actual time required. The comment did not provide an alternate estimate. It should be noted that the estimate in the proposed rule considered that the three manufacturers in question would be submitting an application to market a dosage form they were already producing. Nevertheless, the agency acknowledges that the 480-hour figure may underestimate the actual time required. Accordingly, for this final rule, the agency estimates the time to complete an ANDA or 505(b)(2) application to be between 480 and 720 hours.

Using a 2001 labor rate of $49 per hour[1], and assuming 480 to 720 hours to complete the required application, the one-time cost is between $23,500 and $35,300 ($49/hour x 480 to 720 hours). The one-time cost to all three firms is between $70,600 and $105,800 (3 x $23,500 to $35,300).

As stated in the proposed rule, FDA recognizes there will be future submission costs for new manufacturers of digoxin for oral use, and estimates two manufacturers will enter the market per decade. Some additional annual costs may also be incurred over the life of the application. While there may be some cost savings from the elimination of the batch certification requirement, the savings will be negligible.

According to the Small Business Administration, manufacturers of pharmaceutical preparations with 750 or fewer employees are considered small entities. Applying this definition, only one of the four current manufacturers that will incur submission costs is a small entity. In addition, these costs are likely to represent less than 1 percent of gross revenue. Therefore, the agency certifies that this action will not have a significant economic effect on a substantial number of small entities.

**V. Environmental Impact**

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**VI. Paperwork Reduction Act of 1995**

This final rule does not require information collection subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Public Law 104–13). The information collection consists of the submission of NDAs or ANDAs for digoxin products for oral use. The information collection requirements for the submission of NDAs and ANDAs are contained in 21 CFR part 314 and have been approved under OMB control number 0910–0001, which expires on March 31, 2005.

**List of Subjects for 21 CFR Part 310**

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

## PART 310—NEW DRUGS

1. The authority citation for 21 CFR 310 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

[1]U.S. Department of Labor, Bureau of Labor Statistics, ''2001 Occupational Earnings Data,'' Lawyer: FTP://ftp.bls.gov/pub/special.requests.1f/aat39.txt, 1 February 2002.

**§ 310.500 [Removed]**

2. Section 310.500 *Digoxin products for oral use; conditions for marketing* is removed.

Dated: June 17, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–16108 Filed 6–25–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 510

### New Animal Drugs; Change of Sponsor's Name

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name from MoorMan's, Inc., to ADM Alliance Nutrition, Inc.

**DATES:** This rule is effective June 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** Lonnie W. Luther, Center for Veterinary Medicine (HFV–101), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: lluther@cvm.fda.gov.

**SUPPLEMENTARY INFORMATION:** MoorMan's, Inc., 1000 North 30th St., Quincy, IL 62305–3115, has informed FDA of a change of sponsor's name to ADM Alliance Nutrition, Inc. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect the change of sponsor's name.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

### List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

## PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for ''MoorMan's, Inc.'' and by alphabetically adding an entry for ''ADM Alliance Nutrition, Inc.''; and in the table in paragraph (c)(2) by revising the entry for ''021930'' to read as follows.

**§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.**

* * * * *

(c) * * *

(1) * * *

| Firm name and address | Drug labeler code |
|---|---|
| * * * * * * * | |
| ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115 | 021930 |
| * * * * * * * | |

(2) * * *

| Drug labeler code | Firm name and address |
|---|---|
| * * * * * * * | |
| 021930 | ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115 |
| * * * * * * * | |

Dated: May 24, 2002.

**Andrew J. Beaulieu,**

*Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 02–16051 Filed 6–25–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

**[CGD01–02–060]**

**RIN 2115–AE47**

### Drawbridge Operation Regulations: Passaic River, NJ

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary final rule governing the operation of the Route 7 (Rutgers Street) Bridge, at mile 8.9, across the Passaic River at Belleville, New Jersey. This rule allows the bridge to remain in the closed position from June 15, 2002 through September 3, 2002. This action is necessary to facilitate structural work at the bridge.

**DATES:** This temporary final rule is effective from June 15, 2002 through September 3, 2002.

**ADDRESSES:** Material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–02–060) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 6:30 a.m. to 3

p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joe Arca, Project Officer, First Coast Guard District, (212) 668–7165.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

The Coast Guard has determined that good cause exists under the Administrative Procedure Act (5 U.S.C. 553) for not publishing a NPRM with comment and for making this rule effective in less than thirty days after publication in the **Federal Register**. The Coast Guard believes notice and comment are unnecessary because the only vessel operator upstream from the bridge can pass under the bridge without a bridge opening. In view of the historic absence of bridge opening requests and the demonstrated need to complete structural work at the bridge, any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest.

**Background**

The Route 7 (Rutgers Street) Bridge, at mile 8.9, across the Passaic River, has a vertical clearance of 8 feet at mean high water, and 13 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.739(k) require the bridge to open on signal if at least four-hours notice is given.

The Route 7 Bridge has been replaced with a new Route 7 Bridge located at the same alignment on the waterway and with the same vertical clearance as the old structure. The final phase of bridge construction involves installation of the roadway deck. During this installation the bridge will not be able to open for vessel traffic. Presently there is only one vessel operator upstream from this bridge and that vessel can pass under the bridge without a bridge opening.

The bridge owner, New Jersey Department of Transportation, requested a temporary regulation to facilitate final structural work at the bridge. The Coast Guard believes this rule is reasonable because no vessel traffic will be precluded from transiting this bridge as a result of this bridge closure.

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This conclusion is based on the fact that no known vessel traffic will be prevented from transiting the bridge as a result of this bridge closure.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this rule would have a significant economic impact on a substantial number of small entities. ''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 less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that no known vessels will be prevented from transiting this bridge as a result of this bridge closure.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

This rule meets applicable standards in 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for the temporary final rule.

**Indian Tribal Governments**

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

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From June 15, 2002 through September 3, 2002, § 117.739 is temporarily amended by suspending paragraph (k) and adding a new paragraph (q) to read as follows:

**§ 117.739 Passaic River**

* * * * *

(q) The draw of the Route 7 (Rutgers Street) Bridge, mile 8.9, need not open for the passage of vessel traffic from June 15, 2002 through September 3, 2002.

Dated: May 31 2002.

**J.L. Grenier,**

*Captain, U.S. Coast Guard Acting Commander, First Coast Guard District.*

[FR Doc. 02–16130 Filed 6–25–02; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA261–0344a; FRL–7227–6]**

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

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from motor vehicle and mobile equipment, can and coil, and wood products coating operations, as well as, VOC emissions from graphic arts and polyester resin operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on August 26, 2002, without further notice, unless EPA receives adverse comments by July 26, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**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 documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

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

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

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

**FOR FURTHER INFORMATION CONTACT:** Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4111.

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

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### I. The State's Submittal

*A. What rules did the State submit?*

Table 1 lists the rules we are approving with the dates that they were adopted by the SJVUAPCD and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

| Local agency | Rule No. | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| SJVUAPCD | 4602 | Motor Vehicle and Mobile Equipment Coating Operations | 12/20/01 | 02/20/02 |
| SJVUAPCD | 4604 | Can and Coil Coating Operations | 12/20/01 | 02/20/02 |
| SJVUAPCD | 4606 | Wood Products Coating Operations | 12/20/01 | 02/20/02 |
| SJVUAPCD | 4607 | Graphic Arts | 12/20/01 | 02/20/02 |
| SJVUAPCD | 4684 | Polyester Resin Operations | 12/20/01 | 02/20/02 |

On March 15, 2002, these rule submittals were found to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

*B. Are there other versions of these rules?*

We approved earlier versions of the above listed rules into the SIP on the following dates: Rule 4602, November 13, 1998; Rule 4604, November 18, 1994; Rule 4606, March 22, 2000; Rule 4607, November 13, 1998; and, Rule 4684, June 13, 1995. Between these SIP incorporations and today, CARB made no intervening submittals of these rules.

*C. What is the purpose of the submitted rule revisions?*

The majority of changes to these rules result from adding organic solvent use, disposal, and storage requirements. The changes related to these additions are

listed below. Other individual rule changes are discussed following this review.

—Each rule's purpose and applicability statements were changed to include organic solvent cleaning as well as the storage and disposal of organic solvents and waste solvent materials derived from coating operations subject to the rule.
—Many new definitions were added to each rule. Please see the TSD and attached change copy of a given rule to examine specific definitions.
—An exemption for stripping cured coating, adhesives, and inks was added. However, the rule requirements still apply to cured coatings, adhesives, and inks used in spray application equipment.
—Where they exist, Evaporative Loss Minimization requirements will be removed as of November 14, 2002 to be replaced by Organic Solvent Cleaning, Storage, and Disposal Requirements. These solvent cleaning, storage and disposal requirements are added to each rule regardless of the status of the Evaporative Loss Minimization provisions.
—Recordkeeping requirements for cleaning solvents were added. Also, records must be retained for 5 years.
—Solvent compliance statement requirements were added.

Rule 4602 included the following significant changes to its 1998 SIP approved version.

—Compliance via add-on controls is allowed so long as it is equivalent to the coating content requirements of the rule.
—High Volume Low Pressure spray application requirements were defined.
—Alternative coating application methods are allowed provided they meet a 65% transfer efficiency requirement.
—Test methods for determining transfer efficiency were added.
—Where multiple test methods are listed, a violation of any requirement of the rule can be determined by any test method given.

Rule 4604 included the following significant changes to its 1994 SIP-approved version.

—An exemption has been added for lubricants used in the can manufacturing process.
—Recordkeeping for emission control system was added.
—Test methods for determining VOC content, capture efficiency, and destruction efficiency were updated.
—Test methods for detemining vapor pressure were added.
—Test methods for determining solvent losses from spray gun cleaning systems were added.
—Outdated compliance schedules were removed.

SJVUAPCD's December 20, 2001 amendments to Rule 4606 included the following significant changes to its 2000 SIP approved version.

—The 20 gallons of coating per year exemption was changed to include all wood product coating operations at a stationary source.
—High Volume Low Pressure spray application requirements were defined.
—Exempt sources using less than 20 gallons of coating per year may keep monthly records.
—Test methods for determining capture destruction efficiency were updated.
—Test methods for detemining vapor pressure were added.

SJVUAPCD's December 20, 2001 amendments to Rule 4607 included the following significant changes to its 1998 SIP approved version.

—Fine arts painting was exempted.
—An exemption for cleaning operations in pre-press areas was added.
—High Volume Low Pressure spray application requirements were added.
—Test methods for determining capture efficiency, coating viscosity, and destruction efficiency were updated. Test methods were added for determining vapor pressure.

SJVUAPCD's December 20, 2001 amendments to Rule 4684 included the following significant changes to its 1995 SIP approved version.

—High Volume Low Pressure spray application requirements were added.
—Sections concerning cleaning material and storage and disposal requirements will be removed as of November 14, 2002 to be replaced by solvent cleaning, storage, and disposal requirements.
—Where more than one test method is specified for determining compliance, a violation as determined by any one method constitutes a violation of the rule.

The TSD for a given rule has more information about these rule revisions.

## 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 SJVUAPCD regulates an ozone nonattainment area (*see* 40 CFR part 81), so these rules must fulfill RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

—Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
—''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**.
—''National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings,'' at 40 CFR part 59, Subpart B. However, these standards apply to the manufacture of auto refinishing coatings and not to their application. Consequently, these Subpart B standards are not binding on body shops and auto painters. So, EPA is using these standards, California's ''Determination of Reasonably Available Control Technology (RACT) and Best Available Retrofit Control Technology (BARCT) for Automotive Refinishing Operations,'' and other California air district auto refinishing rules to advise our review of Rule 4602. Along with these guidance documents, EPA used subsequent agency policy memoranda and guidance to evaluate Rule 4602.
—''Control of Volatile Organic Emissions from Existing Stationary Sources Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light Duty Trucks,'' USEPA, May 1977, EPA–450/2–77–008.
—''Guideline Series: Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations,'' USEPA, April, 1996.
—''Control of Volatile Organic Emissions from Existing Stationary Sources Volume VIII: Graphic Arts—Rotogravure and Flexography,'' USEPA, December 1978, EPA–450/2–78–033. A second draft CTG was published along with a companion Alternative Control Technique (ACT) document:

''Guideline Series, Control of Volatile Organic Compound Emissions from Offset Lithographic Printing,'' Draft. USEPA, OAQPS, September 1993; and ''Alternative Control Techniques Document: Offset Lithographic

Printing,'' USEPA, OAQPS, June 1994, EPA 453/R–94–054.

*B. Do the rules meet the evaluation criteria?*

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

*C. EPA Recommendations to Further Improve the Rules.*

For Rules 4602, 4606, and 4607, the respective TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

*D. Public comment and final action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by July 26, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on August 26, 2002. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives any adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## III. Background Information

*A. Why were these rules submitted?*

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC 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

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. section 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. section 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 August 26, 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 22, 2002.

**Keith Takata,**

*Associate Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations 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 *et seq.*

## Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(294)(i)(A)(*3*) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(294) * * *

(i) * * *

(A) * * *

(*3*) Rule 4602 adopted on April 11, 1991 and amended on December 20, 2001; Rule 4604 adopted on April 11, 1991 and amended on December 20, 2001; Rule 4606 adopted on December 19, 1991 and amended on December 20, 2001; Rule 4607 adopted on April 11, 1991 and amended on December 20, 2001; and, Rule 4684 adopted on May 19, 1994 and amended on December 20, 2001.

* * * * *

[FR Doc. 02–16033 Filed 6–25–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[PA183–4195a; FRL–7230–8]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and $NO_X$ RACT Determinations for Hershey Chocolate USA and Pennsylvania Power Company

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revision was submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for Hershey Chocolate USA and the Pennsylvania Power Company, New Castle Plant. Hershey Chocolate USA is located in Dauphin County, Pennsylvania and is a major source of nitrogen oxides ($NO_X$). The Pennsylvania Power Company's New Castle Plant is located in Lawrence County, Pennsylvania and is a major source of volatile organic compounds (VOC) and $NO_X$. EPA is approving this revision to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

**DATES:** This rule is effective on August 26, 2002, without further notice, unless EPA receives adverse written comment by July 26, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to David L. Arnold, Branch Chief, Air Quality Planning & Information Services Branch, Air Protection Division, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Janice Lewis at (215) 814–2185 or Betty Harris at (215) 814–2168 or via e-mail at *lewis.janice@epa.gov* or *harris.betty@epa.gov.* Please note that while questions may be posed via e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and $NO_X$ sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

### II. Summary of the SIP Revisions

On December 21, 2001, PADEP submitted formal revisions to its SIP to establish and impose RACT for several major sources of VOC and $NO_X$. This rulemaking pertains to two of those sources. The other sources are the subject of separate rulemaking actions. The RACT determinations and requirements are included in plan approvals or operating permits issued by PADEP.

(1) Hershey Chocolate USA (Hershey) is a chocolate candy and confectionery manufacturing facility. This facility is located in Dauphin County, Pennsylvania and is a major $NO_X$ emitting facility. In this instance, RACT has been established and imposed by PADEP in an operating permit. On December 21, 2001, PADEP submitted Operating Permit No. OP 22–02004A to EPA as a SIP revision. This permit requires Hershey to ensure that all combustion units subject to monitoring, recordkeeping and reporting requirements comply with RACT. In

addition, all facility units must be operated and maintained in a manner consistent with good operating and management practices. Operating Permit No. OP 22–02004A also requires Hershey $NO_X$ emissions limit of 100 tons per year. $NO_X$ emissions from Hershey's Boilers Nos. 5 and 7 shall not exceed 0.54 lb/mmBtu when firing natural gas and 0.45 lb/mmBtu when firing No. 6 fuel oil. Combined $NO_X$ emissions from Boilers Nos. 5 and 7 shall not exceed 14 tons per consecutive 12 month period. This limit represents an annual capacity factor of less than two percent which satisfies the presumptive RACT requirements specified under 25 PA Code section 129.93 (c)(5) of the SIP. $NO_X$ emissions from Boilers Nos. 2 and 3 shall not exceed 0.04 lb/mmBtu when firing natural gas and 0.40 lb/mmBtu when firing No. 6 fuel oil. These emission rates must be verified annually by stack testing or other means approved by PADEP. Records must be maintained in accordance with 25 Pa Code, section 129.95 requirements.

(2) Pennsylvania Power Company (PPC), New Castle Plant, is a utility facility. This facility is located in Lawrence County, Pennsylvania and is a major VOC and $NO_X$ emitting facility. There are several large combustion units at this facility, and they include five medium bituminous coal-fired steam electric generating units and two oil-fired diesel generators. RACT has been established and imposed by PADEP in an operating permit issued by the state. On December 21, 2001, PADEP submitted Operating Permit No. OP 37–0023 to EPA as a SIP revision. This permit requires that NO**X** emission rates for PPC Boilers Nos. 3, 4 and 5 shall not exceed 0.50 lb/mmBtu on a 30-day rolling average. The $NO_X$ emission rates for PPC Boilers Nos. 1 and 2 shall not exceed 0.50 lb/mmBtu on an annual basis. PPC's Electron Diesel units A and B shall have an annual capacity factor for each diesel unit at less than 5 percent as required under 25 PA Code section 129.93 (c)(5) of the SIP. All combustion units are subject to monitoring, recordkeeping and reporting requirements, and must comply with RACT. PPC must maintain all records in accordance with the recordkeeping requirements of 25 PA Code section 129.95. All units must be operated and maintained in a manner consistent with good air pollution control practices and manufacturer's specifications as identified in PPC's operating permit. These records shall be retained for two years, and made available to PADEP upon request.

## III. EPA's Evaluation of the SIP Revisions

EPA is approving these SIP submittals because the Commonwealth established and imposed requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT or for limiting a source's potential to emit. The Commonwealth has also imposed recordkeeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

## IV. Final Action

EPA is approving revisions to the Commonwealth of Pennsylvania's SIP which establishes and requires RACT for Hershey Chocolate USA located in Dauphin County, Pennsylvania and Pennsylvania Power Company's New Castle Plant, located in Lawrence County, Pennsylvania. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This direct final rule will be effective on August 26, 2002, without further notice unless we receive adverse comment by July 26, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment for a specific source or subset of sources covered by an amendment, paragraph, or section of this rule, only that amendment, paragraph, or section of that source or subset of sources will be withdrawn.

## V. Administrative Requirements

### *A. General 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.*).

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for Hershey Chocolate USA and Pennsylvania Power Company, New Castle Plant.

*C. Petitions for Judicial Review*

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 August 26, 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 approving the Commonwealth's source-specific RACT requirements to control VOC and $NO_X$ from Hershey Chocolate USA and Pennsylvania Power Company, New Castle Plant, 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, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: June 3, 2002.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region III.*

40 CFR 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 *et seq.*

### Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(194) to read as follows:

**§ 52.2020 Identification of plan.**

* * * * *

(c) * * *

(194) Revisions pertaining to VOC and $NO_X$ RACT determinations for a major source submitted by the Pennsylvania Department of Environmental Protection on December 21, 2001.

(i) Incorporation by reference.

(A) A letter submitted on December 21, 2001 by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and $NO_X$ RACT determinations.

(B) Operating permit (OP) :

(*1*) Hershey Chocolate USA, Dauphin County, 22–02004A, effective January 24, 2000.

(*2*) Pennsylvania Power Company, Lawrence County, New Castle Plant, OP 37–0023, effective April 8, 1999.

(ii) Additional Material—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the source listed in paragraph (c)(194)(i)(B) of this section.

[FR Doc. 02–16036 Filed 6–25–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA247–0352; FRL–7227–2]**

### Revisions to the California State Implementation Plan, South Coast Air Quality Management District

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing a limited approval and limited disapproval of revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on February 25, 2002 and concerns volatile organic compound (VOC) emissions from food product manufacturing and processing operations. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves a local rule regulating these emission sources and directs California to correct rule deficiencies.

**EFFECTIVE DATE:** This rule is effective on July 26, 2002.

**ADDRESSES:** You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901;

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

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

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

**FOR FURTHER INFORMATION CONTACT:** Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4111.

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

### I. Proposed Action

On February 25, 2002 (67 FR 8493), EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

| Local agency | Rule No. | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| SCAQMD | 1131 | Food Product Manufacturing and Processing Operations | 09/15/00 | 05/08/01 |

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. Rule 1131's subsection (c)(1)(C) allows for an alternative compliance plan subject to review by the Executive Officer without specifying the criteria and emission estimation protocols for determining compliance. This deficiency is inconsistent with the CAA Section 110(a) requirement that rules be federally enforceable.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

## II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments concerning our proposed action on Rule 1131.

## III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rule. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act according to 40 CFR 52.31. In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. Note that the submitted rule has been adopted by the SCAQMD, and EPA's final limited disapproval does not prevent the local agency from enforcing it.

## IV. Administrative Requirements

### *A. Executive Order 12866*

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

### *B. Executive Order 13045*

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

### *C. Executive Order 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 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 rule.

### *D. 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 final 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.

### *E. Executive Order 13211*

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 Fed. Reg. 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

### *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 final 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.

EPA's disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, 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 approval action promulgated 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 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 action because it does not require the public to perform activities conducive to the use of VCS.

*I. Submission to Congress and the Comptroller General*

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

*J. Petitions for Judicial Review*

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 August 26, 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 22, 2002.

**Keith Takata,**

*Associate Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations 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 *et seq.*

## Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(284)(i)(B)(*5*) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(284) * * *

(i) * * *

(B) * * *

(*5*) Rule 1131 adopted on September 15, 2000.

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[FR Doc. 02–16138 Filed 6–25–02; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[Docket ID–15–6995a; FRL–7232–1]**

## Approval and Promulgation of Sandpoint, Idaho, Air Quality Implementation Plan

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the Governor's designee for the Sandpoint nonattainment area in the State of Idaho.

Sandpoint was classified as nonattainment for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers ($PM_{10}$) pursuant to the Clean Air Act Amendments of 1990. As a result, Idaho was required to submit a plan for bringing the area into attainment. This action approves the plan for Sandpoint submitted on August 16, 1996.

**DATES:** This direct final rule will be effective August 26, 2002, unless EPA receives adverse comment by July 26,

2002. If adverse comments are received, 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:** Mail written comments to Donna Deneen, EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Idaho Department of Environmental Quality, 1445 North Orchard, Boise, ID 83706–2239.

**FOR FURTHER INFORMATION CONTACT:** Donna Deneen, EPA Region 10, Office of Air Quality, at (206) 553–6706.

**SUPPLEMENTARY INFORMATION:** Throughout this document, the words ''we,'' ''us,'' or ''our'' mean the Environmental Protection Agency (EPA). Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

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* * * * *

## I. Sandpoint SIP Revision

### *A. What Action Are We Talking?*

In this action, we are approving the Sandpoint SIP revision submitted by the State of Idaho, Department of Health and Welfare, Division of Environmental Quality (IDEQ, Idaho, or State) on August 16, 1996.[1] We are approving this revision because we believe the State adequately demonstrates that the control measures being implemented in Sandpoint result in attainment of the National Ambient Air Quality Standards (NAAQS) for $PM_{10}$ promulgated on July 1, 1987,[2] as required by the Clean Air Act Amendments of 1990.

### *B. What Is the Background for This Action?*

Idaho began monitoring $PM_{10}$ in the Sandpoint area in 1986. Data collected between 1986 and 1990 showed the Sandpoint area violated the NAAQS for $PM_{10}$. In the 1990 Amendments to the Clean Air Act, areas that violated the $PM_{10}$ NAAQS prior to 1989 were, by law, designated nonattainment for $PM_{10}$ and classified as moderate under sections 107(d)(4)(B) and 188(a).[3] Because Sandpoint was one of those areas (see 56 FR 56694 (November 6, 1991) and 40 CFR 81.313), Idaho was required to adopt and submit a $PM_{10}$ SIP that addressed the requirements of section 189 of the Act.

Idaho initially submitted a $PM_{10}$ SIP for the Sandpoint area in May of 1993. Our initial review found it complete, but our technical review uncovered deficiencies in the plan. Over the next 3 years, Idaho, the local agencies and community in Sandpoint worked to develop a new $PM_{10}$ SIP that addressed the deficiencies of the 1993 submittal.

On August 16, 1996, the State of Idaho submitted a revised $PM_{10}$ SIP for the Sandpoint nonattainment area, replacing and addressing the deficiencies in the 1993 submittal. We have completed a review of the technical and administrative adequacy of this plan and presented the results in a Technical Support Document (TSD). The TSD provides the basis for our approval of the plan and discusses in more detail the air quality planning requirements for moderate $PM_{10}$ nonattainment areas in subparts 1 and 4 of title I of the Act.[4] Based on our review, we believe the plan brings the area into attainment and, therefore, are approving it in this notice.

### *C. What Impact Does This Action Have on the Sandpoint Community?*

EPA's approval of this SIP revision brings Sandpoint a step closer to becoming an attainment area for $PM_{10}$. A redesignation to attainment would relieve the Sandpoint area of certain obligations currently in place because of its nonattainment status.

Although the SIP revision contains emission reduction control measures that impact residential wood combustion, roadways, and industrial facilities, these control measures have been in place and have been enforceable by the State since 1996. Therefore, our approval of these measures now has little or no additional impact on the Sandpoint community.

### *D. What Does the Emissions Inventory for the Sandpoint SIP Revision Show?*

Section 172(c)(3) of the Act requires that a nonattainment plan include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area.

An emissions inventory provides information about the relative contribution of pollution sources within an airshed. It forms the basis for evaluating control strategies, tracking emission reductions, and measuring growth. Because this information is required for an area's attainment demonstration (or its demonstration that it cannot practicably attain) an accurate emissions inventory must accompany each attainment plan submission (57 FR 13539).

[1] During the 2000 legislative session, the Division of Environmental Quality became a separate department rather than a division of the Idaho Department of Health and Welfare, which remained a separate department. See Idaho Code sections 39–102A and 39–104. At the same time, the Department of Environmental Quality was given the air pollution planning authorities previously held by the Department of Health and Welfare. See Idaho Code sections 39–108 to 39–118D. All references in this notice ''IDEQ'' shall refer to the Idaho Department of Health and Welfare, Division of Environmental Quality, and the Idaho Department of Health and Welfare, as appropriate.

[2] On July 18, 1997 EPA promulgated revised and new standards for $PM_{10}$ and $PM_{2.5}$ (62 FR 38651). The U.S. Court of Appeals for the D.C. Circuit in *American Trucking Assoc., Inc., et al.* v. *USEPA*, No. 97–1440 (May 14, 1999) issued an opinion that, among other things, vacated the new standards for $PM_{10}$ that were published on July 18, 1997 and became effective September 16, 1997. However, the $PM_{10}$ standards promulgated on July 1, 1987 were not an issue in this litigation, and the Court's decision does not affect the applicability of those standards in the Sandpoint area. Codification of those standards continue to be recorded at 40 CFR 50.6.

[3] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended (CAA or Act). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, et seq.

[4] For more detailed discussion of the interpretations of title I, see our ''General Preamble,'' which describes our preliminary views on how we intend to review SIP's and SIP revisions. (See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)).

The emissions inventory for the 1996 Sandpoint SIP consists of the actual emissions from industrial sources in 1993 and the projected emissions from area sources in 1994. The reason the inventory covers two different years is because it uses some, but not all, of the inventory prepared for the SIP originally submitted by Idaho in 1993. For the 1993 SIP, emissions inventories were developed for two separate time periods: 1990 (actual emissions) and 1994 (projected emissions). When the State began preparing the 1996 SIP using the same data, concerns were raised about using the values in the 1990 inventory for industrial sources because they might not accurately reflect projected growth at the sources. To address these concerns, the State updated the base-year inventory to reflect actual emissions from industry in 1993. It did not, however, update the area source inventory because there was no indication that the area source inventories were not representative. In order to work with an area source inventory that covered a similar time period as the industrial inventory, the State used the 1994 projected area source inventory instead of the 1990 actual area source inventory for its baseline area source inventory.

As shown below in Table I, the three largest daily wintertime $PM_{10}$ emissions sources in 1993/4 were residential wood combustion, fugitive road dust, and industrial processes. The total maximum daily wintertime $PM_{10}$ emissions were 6364 lb/day, and the annual $PM_{10}$ emissions were 577 tons/year. The term ''Before Control Strategy'' in Table I means before the control measures described in the following section, ''What is the Sandpoint area doing to cut emissions?,'' were in place.

TABLE I.—$PM_{10}$ MAXIMUM DAILY WINTERTIME AND ANNUAL EMISSIONS FOR 1993/4 BASE YEAR

| Source | 24-hr/Before control strategy (lbs/day) | Annual/Before control strategy (tons/year) |
|---|---|---|
| Residential Wood Combustion | 2878 (45.2%) | 97 (16.8%) |
| Fugitive Road Dust | 2210 (34.7%) | 305 (52.9%) |
| Industrial Process | 686 (10.8%) | 90 (15.6%) |
| Building Construction | 469 (7.4%) | 63 (11.0%) |
| Mobile Sources | 110 (1.7%) | 18 (3.2%) |
| Miscellaneous Burning | 8 (0.1%) | 2 (0.3%) |
| Residential Heating | 3 (0.0%) | 1 (0.1%) |
| Agricultural Tilling | 0 (0.0%) | 1 (0.1%) |
| Total | 6364 lbs per day | 577 tons per year |

Table II shows the State projects the three largest daily wintertime $PM_{10}$ emissions sources—before control strategy or after control strategy—in the 1997 attainment year to remain the same (*i.e.,* residential wood combustion, fugitive road dust, and industrial process). The term ''After Control Strategy'' in Table II means after the control measures described in the following section, ''What is the Sandpoint area doing to cut emissions?,'' were in place. The SIP projects the peak daily wintertime $PM_{10}$ emissions in 1997—after control—to be 3926 lb/day. This is in contrast to 6364 lbs/day $PM_{10}$ emitted during the 1993/4 baseline year before the control strategy was in place (see Table I).

TABLE II.—$PM_{10}$ MAXIMUM DAILY WINTERTIME PROJECTIONS FOR ATTAINMENT YEAR 1997

| Source | 24-hr/Before control strategy | 24-hr/After control strategy |
|---|---|---|
| Residential Wood Combustion | 2906 (44.0%) | 1864 (47.5%) |
| Fugitive Road Dust | 2420 (36.7%) | 788 (20.0%) |
| Industrial Process | 870 (13.2%) | 679 (17.3%) |
| Building Construction | 469 (7.1%) | 469 (11.9%) |
| Mobile Sources | 114 (1.7%) | 114 (2.9%) |
| Miscellaneous Burning | 3 (0.0%) | 3 (0.0%) |
| Residential Heating | 9 (0.0%) | 9 (0.0%) |
| Agricultural Tilling | 0 (0.0%) | 0 (0.0%) |
| Total | 6791 lbs per day | 3926 lbs per day |

EPA is approving the emissions inventory in the Sandpoint SIP revision because it generally appears to be accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of section 172(c)(3) of the Clean Air Act.

*E. What Is the Sandpoint Area Doing To Reduce Emissions?*

For approval, the Sandpoint SIP revision must assure that Reasonably Available Control Measures (RACM) to reduce $PM_{10}$ are being implemented in the Sandpoint nonattainment area.[5] There are three main sources of $PM_{10}$ emissions in the Sandpoint

[5] Because the statutory RACM implementation deadlines have passed, RACM must be implemented ''as soon as possible.'' Delaney v. EPA, 898 F.2d 687, 691 (9th Cir. 1990). EPA has interpreted this requirement to be ''as soon as practicable.'' 55 FR 36458, 36505 (September 9, 1990).

nonattainment area: residential wood combustion, fugitive road dust, and industrial processes. The SIP uses the following control strategy to reduce emissions from these sources. Overall, the control strategy provides for a reduction of 2442 pounds of $PM_{10}$ per day.

1. Residential Wood Combustion

a. Public Awareness Program. Sandpoint's public awareness program informs and educates citizens about stove sizing, installation, proper operation and maintenance, general health risks of wood smoke, new technology stoves, and alternatives to wood heating. It uses a wide variety of media, including brochures, radio advisories, newspaper advertisements, TV PSA's, TV advertisements, pay stub inserts, and utility inserts, to educate citizens on these topics. In addition, the Greater Sandpoint Chamber of Commerce developed and implemented an aggressive public awareness campaign in 1995 to initially kick-off its wood smoke reduction efforts. Appendix F–3 of the SIP contains an outline of this campaign.

Sandpoint's public awareness program qualifies as a RACM because it falls within the description of a qualifying public awareness program, as described in Appendix C2 of the General Preamble. 57 FR 18072. (See List of Available Control Measures no. 2.)

b. Uncertified Wood Stove Replacement Program. Sandpoint's uncertified woodstove replacement program is a temporary program that offered homeowners incentive grants to replace their old wood stoves with cleaner burning heating systems. By the time it ended in September 1995, the replacement program had resulted in the removal of 84 wood stoves. These were replaced by 64 natural gas devices, 18 new wood stoves and 2 pellet stoves.

Sandpoint's uncertified wood stove replacement program meets the requirements of RACM because it encourages improved performance of woodburning devices by subsidizing stove purchases. (*See* Appendix C2 of the General Preamble, List of Available Control Measures no. 3.)

c. Tax Reduction Program. Idaho revised its State tax code to allow taxpayers to receive a tax reduction if they replace their uncertified wood stoves with cleaner burning units. As of September 1999, 90 taxpayers in the Sandpoint NAA qualified for this tax deduction.

This program meets the requirements of RACM because it gives a financial incentive for replacing old, uncertified wood stoves with cleaner burning heating units. (*See* Appendix C2 of the General Preamble, List of Available Control Measures no. 3).

d. Limits on Growth of Uncertified Wood Stoves. In 1995, the City of Sandpoint adopted Ordinance No. 965, which, among other things, restricts the sale and installation of uncertified solid fuel heating appliances in the City of Sandpoint. More specifically, the ordinance prohibits any person in the City to advertise for sale, offer for sale, sell, or install in any new or existing building a solid fuel heating device that has not been certified by EPA. The ordinance also prohibits any person in the City of Sandpoint from installing a solid fuel heating appliance in any new or existing structure before first procuring a permit from the building department, which requires payment of a fee.

Because these measures slow the growth of non-certified woodburning devices by restricting their sale and the growth of all woodburning devices by imposing installation permit fees, the measures qualify as RACM. (*See* Appendix C2 of the General Preamble, List of Available Control Measures no. 4.)

e. Episodic Curtailment Program. In 1995, the City of Sandpoint passed Ordinance No. 965, which, among other things, lays out a two-stage approach for wood smoke curtailment. The first stage calls for voluntary curtailment of the use of woodburning appliances if the $PM_{10}$ concentration reaches 70 micrograms per cubic meter (ug/m3). The second stage calls for mandatory curtailment if the concentration reaches 100 ug/m3. Violation of the mandatory curtailment requirements is a misdemeanor offense, and violators are subject to a monetary fine.

IDEQ provides the City of Sandpoint with the daily air quality advisory status. Notification of a voluntary or mandatory curtailment is announced during regularly scheduled broadcasts on radio and television. There is also a toll-free hotline and a phone tree run by the Sandpoint Chamber of Commerce to spread the notification throughout the community.

Because this measure establishes a mandatory episode curtailment program, includes a plan, a communication strategy, a trigger level, and is enforceable, the measure qualifies as a RACM. (*See* Appendix C2 of the General Preamble, List of Available Control Measures no. 1.)

2. Fugitive Road Dust

Winter road sanding has been shown to adversely affect $PM_{10}$ levels throughout the western United States, including Sandpoint. The silt-laden, friable sand is placed on roads by local and state highway departments to provide vehicles with better traction on snow and ice. However, once the snow has melted and the roads have dried out, the remaining dry road sand is easily resuspended by moving vehicular traffic as fugitive dust.

a. Improved quality of anti-skid materials. In 1994, the City of Sandpoint adopted Ordinance 939:

*Material Specifications for Street Sanding Material.* This measure requires applicators of anti-skid materials to use only materials that meet certain standards for fines and durability. Historically, road maintenance departments in the Sandpoint area used anti-skid material that had a fine content ranging from 5–10 percent. The new measure allows a maximum of 2–5 percent fines, depending on the durability index. Lowering the percent of fines improves the abrasiveness of the material and, thus, results in lower silt loadings and, consequently, emissions.

While this ordinance technically only applies to city-maintained roads in Sandpoint, it also impacts State highways that are under the Idaho Transportation Department's (ITD's) jurisdiction as well. ITD, in order to avoid having to maintain separate stockpiles of anti-skid materials, has agreed to adhere to the City's standard on all its highways within the nonattainment area boundaries.

Ordinance 939 qualifies as RACM because it requires improved material specification requirements for skid control materials. (*See* Appendix C1 of the General Preamble (57 FR 18072), List of Available Control Measures no. 8.)

b. Reduced volume of anti-skid materials. Compared to the baseline year, both the ITD and Sandpoint Independent Highway District (SIHD) are using less anti-skid material on State highways and roadways in the City of Sandpoint. There are a number of reasons for this change. First, the adoption of sanding material specifications has increased the cost of material from $0.50/yard to approximately $12.00/yard. This gives ITD and SIHD a strong incentive to apply the materials as efficiently as possible. The regional ITD office has also developed a policy to establish portions of state highways in downtown Sandpoint as an ''anti-skid free zone.'' In this zone, a liquid de-icer is used instead of sand when weather conditions are appropriate. Finally, ITD has made improvements in the application of sand by installing ground

speed control sensors that vary the application rate based on vehicle speed, preventing unnecessary deposition of material that could later become entrained as fugitive dust.

These measures qualify as RACM because they result in a reduction of usage of skid control sand or salt. (See Appendix C1 of the General Preamble, List of Available Control Measures no. 8.)

c. Use of alternative materials—liquid de-icer. SIHD and ITD have acquired equipment to apply liquid de-icer as an alternative to anti-skid material. Between November 1994 and January 1995, SIHD used 8750 gallons of liquid de-icer. Use of a combination of liquid de-icer and anti-skid material also proved effective, with the de-icer acting as a binder and dust suppressant.

This measure qualifies as RACM because it results in a reduction of usage of skid control sand or salt. (*See* Appendix C1 in the General Preamble, List of Available Control Measures no. 8.)

d. Increased frequency of street sweeping. Vacuum sweeping streets reduces the silt loading on vehicle travel lanes and reduces re-entrained road dust. This practice is particularly important after there is no longer a need for sanding material, such as after the snow melts. SIHD purchased and is using a new regenerative air vacuum sweeper, which has a higher collection efficiency than the vacuum sweeper it used previously. Approximately 20% of the local and highway lane miles and approximately 40% of the collector lane miles are swept. In addition, re-surfacing projects are planned to provide uniform road surfaces so that the effectiveness of the new vacuum sweeper is maintained.

This measure qualifies as RACM because it provides for rapid clean up of temporary sources of dust, such as skid control sand, on paved roads. (*See* Appendix C1 of the General Preamble, List of Available Control Measures no. 4.)

3. Industrial Sources—Permitting Strategy

In the inventory, IDEQ identified five industrial facilities in the Sandpoint nonattainment area that had the potential to emit over 1 ton/year of $PM_{10}$: Interstate Concrete & Asphalt, L.D. McFarland Pole Co., Lake Pre-Mix Concrete, Lignetics of Idaho, and Louisiana-Pacific Corp. IDEQ modeled the emissions from each source using EPA's Guideline Model ISCSTDFT. Based on the modeling results and emissions inventory, IDEQ determined the emissions reduction that was necessary at each source in order to ensure attainment with the standard. The necessary reductions for each source were then converted into emission limits and control measures and incorporated into each source's State-issued operating permit. Control measures included the paving of haul roads, installing baghouses and dust collections systems, and improving dust enclosures. Some of the measures required at the Interstate Concrete & Asphalt and Louisiana Pacific sites were required to be implemented in the future. According to certifications submitted by the facilities and inspections by the State, these measures have been successfully implemented.

Table III below shows the reductions that resulted from this control strategy. In particular, it shows that, in 1997, the amount of $PM_{10}$ emissions that industrial sources were allowed to emit was capped at 679 lb/day due to new emissions limitations in the permits. That is 7 lb/day fewer emissions than were actually emitted by industrial sources on a worst-case day in 1993, and 191 lb/day fewer emissions than would have been allowed to be emitted by industrial sources in 1997 if the permits had not been revised.

TABLE III.—$PM_{10}$ MAXIMUM DAILY WINTERTIME INDUSTRIAL EMISSIONS IN SANDPOINT

| | lbs/day |
|---|---|
| 1993 actual emissions from inventory (prior to permit revisions) | 686 |
| 1997 maximum allowable (prior to permit revisions) | 870 |
| 1997 maximum allowable (after permit revisions) | 679 |

EPA has defined RACT for $PM_{10}$ planning purposes as the lowest emission rate that a particular source is capable of meeting by application of control technology that is reasonably available considering technological and economic feasibility. 57 FR 13541. The attainment needs of the area are also considered in determining RACT. Additional controls that might otherwise constitute RACT may not be required if the additional controls would not expedite attainment. 57 FR 13540–13541 and fn. 18 and 20. Because the industrial sources have implemented the emission limits and control requirements of the permits, the permits implement emission limits and control requirements that are technologically and economically feasible. Because the Sandpoint area has not had an exceedance of the $PM_{10}$ standard since January 1994 and because the area appears to have attained the standard, additional controls would not expedite attainment. Therefore, EPA believes that the permits issued by IDEQ to these sources represent RACT in light of the attainment needs of the area.

*F. How Does the SIP Demonstrate Attainment of the $PM_{10}$ Standard?*

To demonstrate attainment of the 24-hour $PM_{10}$ standard, IDEQ ran an air quality dispersion model that predicted the ambient concentrations of $PM_{10}$ in the Sandpoint area in the baseline year and 1997. Among the inputs into the model, IDEQ used five years of Spokane meteorological data and 1997 projected inventory data. Consistent with EPA policy, IDEQ identified the sixth highest 24-hour $PM_{10}$ concentration at each modeling receptor, then used the highest of the sixth highest values to determine whether or not a violation of the standard occurred. ($PM_{10}$ SIP Development Guideline, June 1987, pg 6–4). This value was 133 $\mu g/m^3$ (110 $\mu g/m^3$ from area and industrial sources and 23 $\mu g/m^3$ from background level). Because 133 $\mu g/m^3$ is below the 24-hour $PM_{10}$ standard of 150 $\mu g/m^3$, the SIP demonstrates attainment of the standard.

Supporting these results, monitoring data for Sandpoint show no exceedences of the standard since January 26, 1994. Based on these data, Sandpoint is attaining the 24-hour $PM_{10}$ standard. To demonstrate attainment of the annual $PM_{10}$ NAAQS, IDEQ relied on the area's historic monitoring data, in lieu of a modeling demonstration. We believe this approach is appropriate for two reasons. First, Sandpoint has never violated the annual $PM_{10}$ NAAQS since monitoring began in 1986. Second, the annual arithmetic mean concentration reported for Sandpoint has been at least 15 percent below the standard since monitoring began and at least 45 percent below the standard since 1995. In light

of this historic evidence of clean annual data for the area, in combination with our expectations that control measures implemented to reduce 24-hour levels will also aid in reducing annual levels, we believe it is very unlikely that Sandpoint will exceed the annual standard in the future. Consequently, we believe that IDEQ has demonstrated attainment of the annual standard.

*G. How Are Contingency Measure Requirements Satisfied?*

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIP's that demonstrate attainment must include contingency measures (see generally 57 FR 13510–13512 and 13543–13544). Contingency measures must provide for additional emissions reductions beyond the control strategy that is used to attain the ambient standard. A State may rely on ''over control'' as a contingency measure, that is, rely on control measures that are part of the core control strategy in the SIP. EPA has stated that, in general, reductions equal to at least 25 percent of the total reductions for the control strategy would be appropriate for a moderate nonattainment area. *See* 57 FR 13544.

The Sandpoint SIP revision uses over control to meet the contingency requirements. Emissions reductions from over control are achieved primarily by the mandatory residential wood burning curtailment program adopted by the City of Sandpoint in February 1995. Modeling of the core control measures in the SIP for the Sandpoint nonattainiment area indicates a 63 μg/m$^3$ reduction in the 24-hour standard (from 196 μg/m$^3$ to 133 ug/m$^3$)and a 17 ug/m$^3$ over control reduction in the 24-hour standard (from 150 μg/m$^3$ to 133 μg/m$^3$). This means that the core control measures in the SIP result in over control of 27% (the ratio of 17 μg/m$^3$ to 63 μg/m$^3$). Since these measures result in at least 25 percent more reductions than were needed to attain the standard, EPA approves the contingency measures submitted in the Sandpoint SIP.

*H. How Are Sources of $PM_{10}$ Precursors Addressed?*

The control requirements which are applicable to major stationary sources of $PM_{10}$ also apply to major stationary source of $PM_{10}$ precursors unless EPA determines such sources do not contribute significantly to $PM_{10}$ levels in excess of the NAAQS in that area (*see* section 189(e) of the Act). The General Preamble contains guidance addressing how EPA intends to implement section 189(e) (*see* 57 FR 13539–13540 and 13541–13542).

Because the emission inventory for the Sandpoint nonattainment area did not reveal any major stationary sources, including any major stationary sources of $PM_{10}$ precursors, EPA is granting the exclusion from control requirements authorized under section 189(e) for major stationary sources of $PM_{10}$ precursors.

*I. How Does the SIP Show Reasonable Further Progress (RFP) and Maintenance of the Standard?*

The Sandpoint SIP revision must contain quantitative milestones that demonstrate RFP in maintaining the standard. These must be met until the area is redesignated attainment.

RFP is demonstrated in the Sandpoint nonattainment area by programs in the Sandpoint nonattainment area that continue to reduce $PM_{10}$ emissions. For instance, the tax deduction program has resulted in at least 16 replacements of uncertified wood stoves in the nonattainment area during 1998 and 1999. Another step taken to further reduce emissions is the SIHD's recent purchase of a new high-efficiency street sweeper to improve the effectiveness of the street cleaning program. Steps like these and continued operation of the reduction programs, in combination with monitoring data showing that the Sandpoint NAA has not exceeded the 24-hour standard since early 1994, satisfy the RFP and demonstration of maintenance requirements.

*J. How Are the Enforceability Requirements Satisfied?*

All measures and other elements in the SIP must be enforceable by IDEQ and EPA (see section 172(c)(6) and 110(a)(2)(A) of the Act and 57 FR 13556). Our criteria addressing the enforceability of SIP's and SIP revisions are set forth in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (*see* 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (*see* section 110(a)(2)(C)).

The State submitted to EPA documentation that describes, for each control measure implemented in Sandpoint, how compliance will be assured, the frequency of the assurance, and the enforcement mechanisms to be used. IDEQ's role, as well as other entities' roles in assuring adequate implementation of the RACT/RACM attainment strategy in the Sandpoint SIP, are also identified.

Based on the ordinances IDEQ submitted (City of Sandpoint Ordinances Nos. 965 and 939) and IDEQ's explanation of how those ordinances and other control measures will be tracked and enforced, EPA believes that the enforceability requirements are met. This is consistent with section 110(a)(2)(A) of the Act which requires all emission limits, control measures and other elements of the SIP to be enforceable.

*K. How Are the New Source Review Program Rrequirements Satisfied?*

States with initial moderate $PM_{10}$ nonattainment areas were required to submit a permit program for the construction and operation of new and modified stationary sources of $PM_{10}$ by June 30, 1992. *See* section 189(a) of the Clean Air Act.

The Clean Air Act Amendments of 1990 included revisions to the new source review (NSR) program requirements of the construction and operation of new and modified major stationary sources located in nonattainment areas. The Act requires states to amend their SIPs to reflect these revisions, but it did not require submittal of this element along with the other SIP elements. The Act established June 30, 1992 as the submittal date for the revised NSR programs. *See* section 189(a) of the Act.

In the ''General Preamble,'' EPA issued guidance for states to follow in the development of revised NSR programs to meet the requirements of the 1990 Amendments. 57 FR 13552–13556. EPA guidance calls for states to implement their existing NSR programs during the interval preceding EPA's formal approval of their revised NSR program.

Idaho did not submit a permit program for the construction and operation of new and modified major stationary sources of $PM_{10}$ by the June 30, 1992 deadline. On January 15, 1993, we mailed a findings letter to the Governor of Idaho explaining that this element was missing. The State had until July 15, 1994 to submit the NSR program or sanctions would have been imposed under the provisions of the Act. IDEQ submitted its NSR program on May 17, 1994, and we informed Idaho that the NSR program was complete in a June 10, 1994 letter to the IDEQ Administrator. Upon further review, we uncovered a number of deficiencies in the submitted program. In 1999, IDEQ submitted revisions to its NSR program addressing these deficiencies. We will take action on IDEQ's NSR submittal in a separate FR document when we have completed our review of the 1999 revisions.

*L. How Are Procedural Requirements Satisfied?*

The Act requires states to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a state must be adopted after reasonable notice and public hearing.[6] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a state under the Act must be adopted by the state after reasonable notice and public hearing.

IDEQ held a public hearing on the SIP revision on June 13, 1995 and, after IDEQ reviewed the oral testimony, the IDEQ Administrator adopted the final plan and submitted it to EPA on August 16, 1996 as a proposed revision to the SIP.

EPA reviewed the SIP revision to determine completeness in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. We sent a letter dated December 8, 1997 to the Administrator of the Idaho Division of Environmental Quality indicating the submittal was complete and the next steps to be taken in the review process.

## II. 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 August 26, 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 30, 2002.

**Ron Kreizenbeck,**

*Acting Regional Administrator, Region 10.*

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 *et seq.*

## Subpart N—Idaho

2. Section 52.670 is amended by adding paragraph (c)(35) to read as follows:

### § 52.670 Identification of plan.

* * * * *

(c) * * *

(35) On August 16, 1996, the State of Idaho adopted and submitted a revision to the SIP for Sandpoint, Idaho, for the purpose of bringing about the attainment of the national ambient air quality standards for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

(i) Incorporation by reference.

(A) Ordinance No. 939, Material Specifications for Street Sanding Material, as adopted by the City of Sandpoint on February 22, 1994.

(B) Ordinance No. 965, Solid Fuel Heating Appliance Ordinance, as adopted by the City of Sandpoint on February 21, 1995.

(C) The following terms and conditions limiting particulate matter emissions in the following permits:

(*1*) State of Idaho Air Pollution Operating Permit for Lake Pre-Mix

[6] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

concrete, Permit No. 777–00182, issued May 17, 1996, the following conditions for the cement silo vent: 1.1, 2.1.1, 2.1.2, 3.1.1, and 3.1.2.

(*2*) State of Idaho Air Pollution Operating Permit for Interstate Concrete & Asphalt, Permit No. 017–00048, issued August 2, 1999, the following conditions: for the asphalt plant, 2.2, 3.1.1, 4.1, 4.1.1, 4.1.2, 4.2.1 (as it applies to the hourly $PM_{10}$ emission limit in Appendix A), 4.2.2, 4.2.2.1, 4.2.2.2, and 4.2.2.3; for the concrete batch plant, 2.1, 3.1.1, 4.1, 4.1.1, and 4.1.2; Appendix A (as it applies to $PM_{10}$ emission rates after 7/1/96) and Appendix B (as it applies after 7/1/96).

(3) State of Idaho Department of Environmental Quality Air Quality Tier II Operating Permit for Louisiana-Pacific Corporation, Permit No. 017–00003, issued October 31, 2001, the following conditions: for the Kipper and Sons Hog Fuel Boiler, 2.3 (as it applies to $PM_{10}$), 2.5, 2.7, 2.13, 2.14, 2.17, 2.19; Cleaver-Brooks Natural Gas-Fired Boilers, 3.2 (as it applies to $PM_{10}$); Pneumatic Conveyance System, 4.2, 4.4, 4.7; Drying Kilns, 5.2, 5.4, 5.5; Fugitive Emission Sources, 6.5, 6.7, 6.13; and the Appendix (as it applies to $PM_{10}$).

(ii) Additional Materials.

(A) Sandpoint $PM_{10}$ Air Quality Improvement Plan, adopted August 16, 1996.

[FR Doc. 02–16139 Filed 6–25–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[AZ–113–0054a; FRL–7233–6]**

## Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Arizona

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the moderate area plan and maintenance plan for the Payson area in Arizona and granting a request submitted by the State to redesignate the area from nonattainment to attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers ($PM_{10}$). Elsewhere in this **Federal Register**, we are proposing approval and soliciting written comment on this action; if adverse written comments are received, we will withdraw the direct final rule and address the comments received in a new final rule; otherwise no further rulemaking will occur on this approval action.

**DATES:** This direct final rule is effective August 26, 2002, without further notice, unless we receive adverse comments by July 26, 2002. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Please address your comments to Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. You may inspect and copy the rulemaking docket for this notice at the following location during normal business hours. We may charge you a reasonable fee for copying parts of the docket.

Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are also available for inspection at the address listed below: Arizona Department of Environmental Quality, Library, First Floor, 3033 N. Central Avenue, Phoenix, AZ 85012–2809.

**FOR FURTHER INFORMATION CONTACT:** Dave Jesson, Air Planning Office (AIR–2), EPA Region 9, at (415) 972–3957 or: *jesson.david@epa.gov.*

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### I. Summary of Action

We are approving the moderate area plan and the maintenance plan for the Payson $PM_{10}$ nonattainment area (''Payson'') [1] and redesignating the area to attainment for the 24-hour and annual $PM_{10}$ NAAQS.

On March 29, 2002, the Arizona Department of Environmental Quality (ADEQ) submitted the plan for the Payson $PM_{10}$ nonattainment area as well as a request for redesignation of the area from nonattainment to attainment. On May 31, 2002, we found that the submittal met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

### II. Introduction

*A. What National Ambient Air Quality Standards are considered in today's rulemaking?*

Particulate matter with an aerodynamic diameter of less than 10 micrometers ($PM_{10}$) is the pollutant that is the subject of this action. The NAAQS are safety thresholds for certain ambient air pollutants set to protect public health and welfare. $PM_{10}$ is among the ambient air pollutants for which we have established such a health-based standard.

$PM_{10}$ causes adverse health effects by penetrating deep in the lung, aggravating the cardiopulmonary system. Children, the elderly, and

[1] For the definition of the Payson nonattainment area, *see* 40 CFR 81.303. Payson is a city with a 2000 decennial census count of 13,620, located in Gila County, about 100 miles northeast of Phoenix.

people with asthma and heart conditions are the most vulnerable.

On July 1, 1987 (52 FR 24634), we revised the NAAQS for particulate matter with an indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. (*See* 40 CFR 50.6).

The annual primary $PM_{10}$ standard is 50 ug/$m^3$ as an annual arithmetic mean. The 24-hour $PM_{10}$ standard is 150 ug/$m^3$ with no more than one expected exceedance per year. The secondary $PM_{10}$ standards, promulgated to protect against adverse welfare effects, are identical to the primary standards.

*B. What is a State Implementation Plan?*

The Clean Air Act requires States to attain and maintain ambient air quality equal to or better than the NAAQS. The State's commitments for attaining and maintaining the NAAQS are outlined in the State Implementation Plan (or SIP) for that State. The SIP is a planning document that, when implemented, is designed to ensure the achievement of the NAAQS. Each State currently has a SIP in place, and the Act requires that SIP revisions be made periodically as necessary to provide continued compliance with the standards.

SIPs include, among other things, the following: (1) An inventory of emission sources; (2) statutes and regulations adopted by the State legislature and executive agencies; (3) air quality analyses that include demonstrations that adequate controls are in place to meet the NAAQS; and (4) contingency measures to be undertaken if an area fails to attain the standard or make reasonable progress toward attainment by the required date.

The State must make the SIP available for public review and comment through a public hearing, it must be adopted by the State, and submitted to EPA by the Governor or her designee. EPA takes Federal action on the SIP submittal thus rendering the rules and regulations Federally enforceable. The approved SIP serves as the State's commitment to take actions that will reduce or eliminate air quality problems. Any subsequent revisions to the SIP must go through the formal SIP revision process specified in the Act.

*C. What is the classification of this area?*

Upon enactment of the 1990 Clean Air Act Amendments (Act), $PM_{10}$ areas meeting the requirements of either (i) or (ii) of section 107(d)(4)(B) of the Act were designated nonattainment for $PM_{10}$ by operation of law and classified ''moderate.'' See generally, 42 U.S.C. 7407(d)(4)(B). These areas included all former Group I $PM_{10}$ planning areas identified in 52 FR 29383 (August 7, 1987) and further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the NAAQS for $PM_{10}$ prior to January 1, 1989 (many of these areas were identified by footnote 4 in the October 31, 1990 **Federal Register** document). A **Federal Register** notice announcing the areas designated nonattainment for $PM_{10}$ upon enactment of the 1990 Amendments, known as ''initial'' $PM_{10}$ nonattainment areas, was published on March 15, 1991 (56 FR 11101). A subsequent **Federal Register** document correcting some of these areas was published on August 8, 1991 (56 FR 37654). These nonattainment designations and moderate area classifications were codified in 40 CFR part 81 in a **Federal Register** document published on November 6, 1991 (56 FR 56694). All other areas in the nation not designated nonattainment at enactment were designated unclassifiable (see section 107(d)(4)(B)(iii) of the Act).

In January and February of 1991, we notified the Governors of those States which recorded violations of the $PM_{10}$ standard after January 1, 1989 that EPA believed that those areas should be redesignated as nonattainment for $PM_{10}$. In September 1992 we proposed that several areas be redesignated nonattainment for $PM_{10}$ and took final action on December 21, 1993 (58 FR 67335). Payson was among those areas listed. The effective date of the final action redesignating this area as nonattainment for the $PM_{10}$ NAAQS was January 20, 1994.

*D. What are the applicable CAA provisions for $PM_{10}$ moderate area plans?*

The air quality planning requirements for moderate $PM_{10}$ nonattainment areas are set out in subparts 1 and 4 of title I of the Act. We have issued guidance in a General Preamble describing our views on how we will review SIPs and SIP revisions submitted under title I of the Act, including those containing moderate $PM_{10}$ nonattainment area SIP provisions. 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992). The General Preamble provides a detailed discussion of our interpretation of the Title I requirements.

1. Statutory Provisions

States with initial moderate $PM_{10}$ nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

(a) Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

(b) Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

(c) Pursuant to section 189(c)(1), for plan revisions demonstrating attainment, quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

(d) Provisions to assure that the control requirements applicable to major stationary sources of $PM_{10}$ also apply to major stationary sources of $PM_{10}$ precursors, except where the Administrator determines that such sources do not contribute significantly to $PM_{10}$ levels which exceed the NAAQS in the area.

In addition, States must submit a permit program for the construction of new and modified major stationary sources in 1992 and contingency measures in 1993. See sections 189(a) and 172(c)(9).

2. Clean Data Area Approach

The clean data areas approach applies the clean data policy concept already in place for ozone to selected $PM_{10}$ nonattainment areas in order to approve control measures for these areas into the SIP. The approach only applies to $PM_{10}$ areas with simple $PM_{10}$ source problems, such as residential wood combustion and fugitive dust problems. If an area meets the following requirements, the State will no longer be required to develop an attainment demonstration. The requirements for the approach are:

(a) The area must be attaining the $PM_{10}$ NAAQS with the three most recent years of quality assured air quality data.

(b) The State must continue to operate an appropriate $PM_{10}$ air quality monitoring network, in accordance with 40 CFR part 58, in order to verify the attainment status of the area.

(c) The control measures for the area, which were responsible for bringing the area into attainment, must be approved by EPA. EPA would also need to find that the area has adopted RACM/RACT, and make a finding that the area attained the 24-hour and annual $PM_{10}$ NAAQS.

(d) An emissions inventory must be completed for the area. In addition to the above requirements for the use of the clean data areas approach, any requirements that are connected solely to designation or classification, such as new source review (NSR) and RACM/RACT, will remain in effect. However, the requirements under CAA section 172(c) for developing attainment demonstrations, RFP demonstrations and contingency measures are waived due to the fact that the areas which are eligible under this approach have already attained the $PM_{10}$ NAAQS and have met RFP.

Any sanctions clocks that may be running for an area due to failure to submit, or disapproval of any attainment demonstration, RFP or contingency measure requirements, are stopped. In addition, areas are still required to demonstrate transportation conformity using the build/no-build test, or the no-greater-than-1990 test. 40 CFR 93.119. The emissions budget test would not be required, because the requirements for an attainment demonstration and RFP, which establish the budgets, no longer apply. The applicable tests for general conformity still apply. The use of the clean data areas approach does not constitute a CAA section 107(d) redesignation, but only serves to approve nonattainment area SIPs required under Part D of the CAA.

*E. What are the applicable provisions for $PM_{10}$ maintenance plans?*

1. Statutory Provisions

CAA section 175A provides the general framework for maintenance plans. The maintenance plan must provide for maintenance of the NAAQS for at least 10 years after redesignation, and must include any additional control measures as may be necessary to ensure such maintenance. In addition, maintenance plans are to contain such contingency provisions as we deem necessary to assure the prompt correction of a violation of the NAAQS that occurs after redesignation. The contingency measures must include, at a minimum, a requirement that the State will implement all control measures contained in the nonattainment SIP prior to redesignation. Beyond these provisions, however, CAA section 175A does not define the content of a maintenance plan. Our primary guidance on maintenance plans and redesignation requests is a September 4, 1992 memo from John Calcagni, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (''Calcagni memo'').

2. Limited Maintenance Plan (LMP) Option

On August 9, 2001, EPA issued new guidance on streamlined maintenance plan provisions for certain moderate $PM_{10}$ nonattainment areas seeking redesignation to attainment (Memo from Lydia Wegman entitled ''Limited Maintenance Plan Option for Moderate $PM_{10}$ Nonattainment Areas''). This policy allows maintenance plans for areas having a low risk of future exceedances to omit air quality modeling, future year emission inventories, and some of the standard analyses to determine transportation conformity with the SIP.

To qualify for the LMP option, the area should be maintaining the NAAQS, and the average $PM_{10}$ design value for the area, based upon the most recent 5 years of air quality data at all monitors in the area, should be at or below 40 ug/$m^3$ for the annual and 98 ug/$m^3$ for the 24 hour $PM_{10}$ NAAQS with no violations at any monitor in the nonattainment area. *See* section IV of the LMP Option memo cited above. The 40 and 98 ug/$m^3$ limits are margin of safety (MOS) limits for the relevant $PM_{10}$ standard for a given area. In addition, the area should expect only limited growth in on-road motor vehicle $PM_{10}$ emissions (including fugitive dust) and should have passed a motor vehicle regional emissions analysis test.

As discussed below in Section III.B.1, the State has demonstrated that the LMP option is appropriate for the Payson nonattainment area.

*F. What are the applicable provisions for redesignation to attainment for $PM_{10}$?*

The 1990 CAA Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment:

(1) the area must have attained the applicable NAAQS;

(2) the area has met all relevant requirements under section 110 and Part D of the Act;

(3) the area has a fully approved SIP under section 110(k) of the Act;

(4) the air quality improvement must be due to permanent and enforceable reductions; and,

(5) the area must have a fully approved maintenance plan pursuant to section 175A of the Act.

## III. Review of the Arizona State Submittal Addressing These Provisions

*A. Moderate Area Plan*

1. Did the State meet the CAA procedural provisions?

Prior to adoption by the State, the plan received proper public notice and was the subject of a public hearing in Payson on February 19, 2002.[2]

2. Has the State demonstrated that the area qualifies for the clean data policy?

a. *Based on the past 3 years of air quality data, is the area attaining both the 24-hour and annual* $PM_{10}$ NAAQS? An area has attained the 24-hour standard when the average number of expected exceedances per year is less than or equal to one, when averaged over a three-year period. (40 CFR 50.6) To make this determination, three consecutive years of complete ambient air quality data were collected in accordance with Federal requirements (40 CFR part 58, including appendices). On February 15, 2002, EPA issued a determination that the Payson area had attained the PM–10 NAAQS. 67 FR 7082.

The Payson area has one $PM_{10}$ monitoring site, currently located at the Payson water treatment plant at 204 W. Aero Drive. Street. The area has attained both the annual and 24-hour $PM_{10}$ NAAQS for the past 3 years; indeed, the area has not exceeded either NAAQS since 1990. Thus, the submittal demonstrates that the area has met the ambient attainment requirements for both the 24-hour and annual $PM_{10}$ NAAQS.

b. *Is the State continuing to operate an appropriate $PM_{10}$ air quality monitoring network?* Demonstrating that an area has attained the $PM_{10}$ NAAQS involves submittal of ambient air quality data from an ambient air monitoring network representing peak $PM_{10}$ concentrations, which should be stored in the EPA Aerometric Information Retrieval System (AIRS). Once the area has been redesignated, the State will continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The maintenance plan contains provisions for continued operation of air quality monitors that provide such verification. ADEQ has committed to continue operating an appropriate air quality monitoring network, in

[2] In June 1995, ADEQ submitted a $PM_{10}$ plan for Payson. That plan, which addressed the moderate SIP provisions, is superseded by the current submittal, which covers both moderate plan and maintenance plan provisions.

accordance with 40 CFR part 58, to verify the attainment status of the area. This commitment satisfies the obligation to maintain an adequate monitoring program in the area.

c. *Has EPA approved the control measures responsible for bringing the areas into attainment?* The measures implemented in Payson beginning in 1990 and used for the attainment demonstration are listed below. These measures address the source categories responsible for the exceedances recorded in the Payson area: reentrained dust from paved and unpaved roads and wood smoke.

1. Arizona Department of Transportation (ADOT) installed 2 miles of curbs and gutters on Arizona State Highway 87 from the intersection of Highways 87 and 260 to Roundup Road in 1992.

2. ADOT installed 5 miles of paved shoulders on Highway 87 North and Highway 260 East when those stretches were widened to 4 lanes in 1992.

3. The Town of Payson paved 4 miles of unpaved roads that were unpaved in 1990.

4. Gila County paved nearly 18 miles of previously unpaved roads starting in 1989.

5. ADEQ implemented Arizona Administrative Code R18–2–607 that requires control of storage piles to minimize fugitive emissions.

6. In 1988, EPA implemented New Source Performance Standards for woodstoves.

Implementation of these measures helped bring the area into timely attainment of both the 24-hour and annual $PM_{10}$ NAAQS, and the measures thus meet the CAA requirement for RACM. Measures 1–4 are fully constructed and are permanent by their very nature. Measure 5 has previously been approved by EPA and remains a Federally enforceable component of the SIP. Therefore, we conclude that the submittal demonstrates that the controls responsible for bringing the area into attainment have been fully carried out or are fully approved SIP regulations.

In addition to these permanent or SIP enforceable controls, the Town of Payson implemented an ordinance requiring the paving of commercial parking facilities and the paving of unpaved roads as condition of minor land divisions. Kaibab Industries' lumber and sawmill operation closed and the facility was dismantled in June 1993, and the Lewis M. Pyle Memorial Hospital's medical waste incinerator was shutdown and removed in 1993. Smoke management plan requirements were implemented by the Forest Service, Bureau of Land Management, and Arizona Department of State Lands, in cooperation with ADEQ. These supplemental strategies contributed still further PM–10 emission reductions and public health protection. Continued implementation of the measures will help ensure that the Payson area maintains the 24-hour and annual $PM_{10}$ NAAQS.

3. Do the emissions inventories meet CAA provisions?

The Payson plan includes emission inventories for 1999 to show emission levels in a recent, representative year during which there were no violations of the $PM_{10}$ standards. This inventory is summarized in Table IV–1, while Table IV–3 presents an inventory of industrial sources, all of which emit less than 3 tons per year of $PM_{10}$. This inventory is consistent with our most recent guidance on emission inventories for nonattainment areas, and reflects the latest information available, including 2000 census data.[3] We approve the emissions inventory under CAA section 172(c)(3) as current, accurate, and complete.

4. Do the plans meet the CAA provisions for RACM and RACT?

The measures listed above in Section III.A.2.c. reflect effective control for an important emissions category in the Payson area: Reentrained dust from traffic on paved and unpaved roads. These measures were implemented expeditiously and have proven sufficient to prevent violations of the NAAQS over the past 10 years. We therefore conclude that the controls reflect RACM and we approve the plan as meeting the RACM provisions of CAA Section 189(a)(1)(C).

CAA Section 189(e) requires RACT provisions for gaseous precursors of $PM_{10}$ except where EPA determines that such sources do not contribute significantly to $PM_{10}$ levels exceeding the standard. There are no major stationary sources in the nonattainment area, and total emissions associated with all industrial sources account for only 0.93 percent of $PM_{10}$ emissions in 1999. For this reason and because the historic violations of the $PM_{10}$ NAAQS were the direct result of reentrained dust and wood smoke emissions in the late 1980's, no sources within the Payson area are subject to the RACT requirement, either with respect to primary or secondary $PM_{10}$ emissions.

[3] *PM–10 Emission Inventory Requirements,* EPA–450/2–93, USEPA 1993. Emissions factors were generally derived using methodologies from the *Procedures Document for National Emission Inventory, Criteria Air Pollutants 1985–1999* (NEI Procedures), USEPA 2001.

5. Are the CAA provisions for new source review satisfied?

For the Payson nonattainment area, ADEQ administers the preconstruction review and permitting provisions of Arizona Administrative Code, Title 18, Chapter 2, Articles 1, 3, 4, and 5. All new major sources and modifications to existing major sources are subject to the new source review (NSR) and prevention of significant deterioration (PSD) requirements of these rules. We have not yet fully approved the State's NSR rules but, for major sources and modifications of $PM_{10}$ emissions, we have delegated to Arizona the authority to administer the PSD program.

Section 172(c)(5) requires NSR permits for the construction and operation of new and modified major stationary sources anywhere in nonattainment areas. We have determined that areas being redesignated from nonattainment to attainment do not need to comply with the requirement that an NSR program be approved prior to redesignation provided that the area demonstrates maintenance of the standard without part D nonattainment NSR in effect. The rationale for this decision is described in a memorandum from Mary Nichols dated October 14, 1994 (''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment''). We have determined that the ADEQ maintenance demonstration for Payson does not rely on nonattainment NSR and, therefore, the State need not have a fully approved nonattainment NSR program prior to approval of the redesignation request. The ADEQ's PSD program at 40 CFR 52.21 will become effective in the area with respect to PM–10 upon redesignation of the area to attainment, pursuant to the delegation agreement between EPA and ADEQ dated March 12, 1999.

*B. Maintenance Plan*

1. Has the State demonstrated that the area qualifies for the LMP option?

Section II.E. of the plan discusses how the area meets each of the LMP option criteria for use of this option.

First, the area should be attaining the NAAQS. Table III–3 of the plan summarizes quality assured ambient data showing that the Payson area has continued to meet both the 24-hour and annual $PM_{10}$ NAAQS for the period 1996–2000.

Second, the design values for the past 5 years must be at or below the margin of safety levels identified in the LMP option. The annual average $PM_{10}$ design value for the area from 1996

through 2000 data is 26 ug/m$^3$, and the 24-hour average design value is 88 ug/m$^3$, both of which are below the MOS limits of 40 and 98 ug/m$^3$, respectively.

Third, the area must meet the motor vehicle regional emissions analysis test in the LMP option. The calculated value is 28.3 ug/m$^3$ for the annual average $PM_{10}$ standard, which is less than the 40 ug/m$^3$ MOS limit for annual, and the calculated value is 95.7 ug/m$^3$ for the 24-hour average $PM_{10}$ standard, which is less than the 98 ug/m$^3$ MOS limit.

Therefore, the State has shown that the area qualifies for the streamlined maintenance plan provisions under the LMP option. We have concluded in Section III.A. that the plan submittal meets the moderate area plan provisions for emissions inventories, permanent and enforceable control measures, and maintenance of adequate monitoring. There is one remaining maintenance plan provision under the LMP option not previously discussed: contingency measures.

2. Does the plan meet the CAA provisions for contingency measures?

The maintenance plan must include contingency control measures which will go into effect automatically to correct any future violation of the NAAQS. These provisions must include a requirement that the State will implement all measures contained in the nonattainment area SIP. The August 9, 2000 LMP option memo states that the contingency measures do not have to be fully adopted at the time of redesignation.

ADEQ has included 6 contingency measures in the maintenance plan (see table below entitled ''Payson Area Contingency Measures'').

PAYSON AREA CONTINGENCY MEASURES

| Contingency measures | Implementing entity |
|---|---|
| Revise Arizona Administrative Code R18–2–702 B opacity limits from 40% to 20% ..... | ADEQ. |
| If any PM–10 industrial source operating within the maintenance area is found to be contributing to monitored readings above the LMP allowable limits, ADEQ will review existing air quality permit(s) to identify additional $PM_{10}$ control measures which may be needed. If the $PM_{10}$ source does not have a permit, the permitting authority will determine if an air quality permit and $PM_{10}$ controls are needed. | ADEQ. |
| If wood burning sources are found to be contributing to monitored readings above the LMP allowable limits, ADEQ will review State regulations and programs to determine appropriate action. | ADEQ. |
| Pave or stabilize public unpaved roads, vacant lots, or unpaved parking lots located in the $PM_{10}$ maintenance area subject to limits of statutory authority. | Town of Payson and/or Gila County. |
| Continuation of Smoke Management Plan—State and Federal land managers conducting prescribed burning must register with ADEQ for proposed burning activities—Arizona Administrative Code (A.A.C.) R–18–2–Article 15 (Forest & Range Management Burns. | U.S. Forest Service, U.S. Bureau of Land Management, Arizona State Land Department, ADEQ. |
| Review of the requirement for dust control measures for material storage piles to determine if additional action is needed (A.A.C. R–18–2–607). | ADEQ. |

The State also committed to determine whether or not violations have been recorded within 6 months of the close of each calendar year, and to review and determine the appropriate contingency measure(s) by the end of the same calendar year. Finally, the State committed to implement the selected contingency measure(s) within 1 year of determining that a violation has occurred. We conclude that these measures and commitments meet the contingency measure provision of CAA Section 175A(d).

*C. Redesignation Requests*

1. Has Payson attained the 24-hour and annual $PM_{10}$ NAAQS?

The area has attained the 24-hour standard when the average number of expected exceedances per year is less than or equal to one, when averaged over a three-year period. (40 CFR 50.6) To make this determination, three consecutive years of complete ambient air quality data were collected in accordance with Federal requirements (40 CFR part 58, including appendices).

As discussed above, there have been no recorded exceedances of either the annual or 24-hour $PM_{10}$ NAAQS in the area in the past 3 years. The area has attained both the annual and 24-hour $PM_{10}$ NAAQS for the past 3 years.

2. Has the area met all relevant requirements under section 110 and Part D of the Act?

The Calcagni memo directs States to meet all of the applicable section 110 and part D planning requirements for redesignation purposes. EPA interprets the Act to require State adoption and EPA approval of the applicable programs under section 110 and part D that were due prior to the submittal of a redesignation request, before EPA may approve a redesignation request.

Section 110(a)(2) of the Act contains general requirements for nonattainment plans. These requirements include, but are not limited to, submittal of a SIP that has been adopted by the State after reasonable notice and public hearing, provisions for establishment and operation of appropriate apparatus, methods, systems, and procedures necessary to monitor ambient air quality, implementation of a permit program, provisions for Part C—Prevention of Significant Deterioration (PSD) and Part D—New Source Review (NSR) permit programs, criteria for stationary source emission control measures, monitoring and reporting, provisions for modeling, and provisions for public and local agency participation.

Part D includes additional provisions for nonattainment areas, listed generally in CAA section 172(c) and specifically for $PM_{10}$ in sections 188–9. These additional Part D provisions include: implementation of RACM as expeditiously as practicable, reasonable further progress, emissions inventories, and quantification of growth allowances (if the State elects to establish such allowances). See the General Preamble for further explanation of these requirements.

For purposes of redesignation, the Arizona SIP was reviewed to ensure that all requirements under the Act were satisfied. The Arizona SIP was approved under section 110 of the Act as satisfying all applicable section 110 and Part D provisions. These approvals are codified in 40 CFR 52.123. We are approving the SIP with respect to the special Part D provisions for $PM_{10}$ nonattainment areas (CAA sections 188–9) in Section III.A. above.

3. Does the Payson Area have a fully approved SIP under section 110(k) of the Act?

We are approving in today's action the moderate area and maintenance plan for the Payson Area, and confirming that the SIP meets other applicable provisions of the CAA.

4. Has the State shown that the air quality improvement in the area is permanent and enforceable?

The submittal shows that the improvements in air quality were not due to temporary economic downturn or unusually favorable meteorology (p. 12). On the contrary, economic growth has continued over the past 10 years since the area attained the NAAQS, and the area has experienced the full range of weather conditions in that period. As discussed above, attainment is the result of the establishment of permanent and enforceable controls on fugitive dust emissions.

5. Does the area have a fully approved maintenance plan pursuant to section 175A of the Act?

We are fully approving the maintenance plan, as allowed by the LMP guidance, in Section III.B. above.

*D. Conformity*

The transportation conformity rule and the general conformity rule apply to nonattainment areas and attainment areas with maintenance plans. Both rules provide that conformity can be demonstrated by showing that the expected emissions from planned actions are consistent with the emissions budget for the area.

1. Transportation Conformity

Under the limited maintenance plan option, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that qualifying areas would experience so much growth in that period that a NAAQS violation would result.

While areas with maintenance plans approved under the limited maintenance plan option are not subject to the budget test, the areas remain subject to other transportation conformity requirements of 40 CFR Part 93, Subpart A. Thus, the metropolitan planning organization (MPO) in the area or the State will still need to document and ensure that: (1) Transportation plans and projects provide for timely implementation of SIP transportation control measures (TCMs) in accordance with 40 CFR 93.113; (2) transportation plans and projects comply with the fiscal constraint element per 40 CFR 93.108; (3) the MPO's interagency consultation procedures meet applicable requirements of 40 CFR 93.105; (4) conformity of transportation plans is determined no less frequently than every three years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104; (5) the latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111; (6) projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and (7) project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

The adequacy review period for these SIP submissions is concurrent with the public comment period on this direct final rule. Because limited maintenance plans do not contain budgets, the adequacy review period for these maintenance plans serves to allow the public to comment on whether limited maintenance is appropriate for these areas. Interested parties may comment on the adequacy and approval of the limited maintenance plans by submitting their comments on the proposed rule published concurrently with this direct final rule.

Our action on the limited maintenance plans for these areas has been announced on EPA's conformity Web site: *http://www.epa.gov/oms/traq.* Once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity.''

2. General Conformity

For Federal actions which are required to address the specific requirements of the general conformity rule, one set of requirements applies particularly to ensuring that emissions from the action will not cause or contribute to new violations of the NAAQS, exacerbate current violations, or delay timely attainment. One way that this requirement can be met is to demonstrate that ''the total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment area, would not exceed the emissions budgets specified in the applicable SIP.'' 40 CFR 93.158(a)(5)(i)(A).

The decision about whether to include specific allocations of allowable emissions increases to sources is one made by the State and local air quality agencies. Such emissions budgets are unlike and not to be confused with those used in transportation conformity. Emissions budgets in transportation conformity are required to limit and restrain emissions. Emissions budgets in general conformity allow increases in emissions up to specified levels.

ADEQ has not chosen to include any specific emissions allocations for Federal projects that would be subject to the provisions of general conformity.

## V. Final Action

We are approving the moderate area plan, and the maintenance plan for the Payson Area, and we are redesignating the area from nonattainment to attainment for the 24-hour and annual $PM_{10}$ NAAQS. We are 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 and redesignate the area if relevant adverse comments are filed. This rule will be effective August 26, 2002, without further notice unless relevant adverse comments are received by July 26, 2002. If we receive such comments, this action will be withdrawn before the effective date. All public comments received will then be addressed in a subsequent final rule based on the proposed action. We will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective August 26, 2002.

## V. 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. section 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. section 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 (insert date 60 days after date of publication). 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**

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 6, 2002.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

Chapter I, title 40 of the Code of Federal Regulations 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 *et seq.*

### Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(104) to read as follows:

**§ 52.120 Identification of plan.**

* * * * *

(c) * * *

(104) The following plan was submitted on March 29, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(1) Payson Moderate Area $PM_{10}$ Maintenance Plan and Request for Redesignation to Attainment, adopted on March 29, 2002.

## PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

2. In § 81.303 the $PM_{10}$ table is amended by revising the entry for the Gila County (Part) to read as follows:

**§ 81.303 Arizona.**

* * * * *

ARIZONA $PM_{10}$

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| * | * | * | * | * |
| Gila County (part): | | | | |
| Payson: T01N, sections 1–3, 10–15, 22–27, and 34–36 of R9E; T11N, sections 1–3, 10–15, 22–27, and 34–36 of R9E; T10–11N, R10E; T10N, sections 4–9, 16–21, and 28–33 of R11E; T11N, sections 4–9, 16–21, and 28–33 of R11E. | August 26, 2002. ..... | Attainment. | | |

ARIZONA $PM_{10}$—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| * | * | * | * | * |

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 02–16104 Filed 6–25–02; 8:45 am]
**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 52 and 81

**[AZ–109–0051a; FRL–7233–5]**

## Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Arizona

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the moderate area plan and maintenance plan for the Bullhead City area in Arizona and granting a request submitted by the State to redesignate the area from nonattainment to attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers ($PM_{10}$). Elsewhere in this **Federal Register**, we are proposing approval and soliciting written comment on this action; if adverse written comments are received, we will withdraw the direct final rule and address the comments received in a new final rule; otherwise no further rulemaking will occur on this approval action.

**DATES:** This direct final rule is effective August 26, 2002, without further notice, unless we receive adverse comments by July 26, 2002. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Please address your comments to Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. You may inspect and copy the rulemaking docket for this notice at the following location during normal business hours. We may charge you a reasonable fee for copying parts of the docket. Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are also available for inspection at the address listed below: Arizona Department of Environmental Quality, Library, First Floor, 3033 N. Central Avenue, Phoenix, AZ 85012–2809.

**FOR FURTHER INFORMATION CONTACT:** Dave Jesson, Air Planning Office (AIR–2), EPA Region 9, at (415) 972–3957 or: *jesson.david@epa.gov*

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### I. Summary of Action

We are approving the moderate area plan and the maintenance plan for the Bullhead City $PM_{10}$ nonattainment area (''Bullhead City'')[1] and redesignating the area to attainment for the 24-hour and annual $PM_{10}$ NAAQS. We are also approving the State of Arizona's request to revise the boundaries of the Bullhead City area by excluding 3 townships. As a result of the redesignation, the excluded townships become part of the State's unclassifiable area for $PM_{10}$, and are not subject to the provisions of the $PM_{10}$ maintenance plan for Bullhead City.

On February 7, 2002, the Arizona Department of Environmental Quality (ADEQ) submitted the plan for the Bullhead City $PM_{10}$ nonattainment area as well as a request for a boundary change and redesignation of the area from nonattainment to attainment. On May 31, 2002, we found that the submittal met the completeness criteria in 40 CFR part 51, Appendix V, which must be met before formal EPA review.

### II. Introduction

#### *A. What National Ambient Air Quality Standards are considered in Today's rulemaking?*

Particulate matter with an aerodynamic diameter of less than 10 micrometers ($PM_{10}$) is the pollutant that is the subject of this action. The NAAQS are safety thresholds for certain ambient air pollutants set to protect public

[1] For the existing definition of the Bullhead City nonattainment area, *see* 40 CFR 81.303. Bullhead City is a city with a 2000 decennial census count of 33,769, located in western Mohave County across the Colorado River from Nevada.

health and welfare. $PM_{10}$ is among the ambient air pollutants for which we have established such a health-based standard.

$PM_{10}$ causes adverse health effects by penetrating deep in the lung, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

On July 1, 1987 (52 FR 24634), we revised the NAAQS for particulate matter with an indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. (*See* 40 CFR 50.6).

The annual primary $PM_{10}$ standard is 50 ug/$m^3$ as an annual arithmetic mean. The 24-hour $PM_{10}$ standard is 150 ug/$m^3$ with no more than one expected exceedance per year. The secondary $PM_{10}$ standards, promulgated to protect against adverse welfare effects, are identical to the primary standards.

*B. What Is a State Implementation Plan?*

The Clean Air Act requires States to attain and maintain ambient air quality equal to or better than the NAAQS. The State's commitments for attaining and maintaining the NAAQS are outlined in the State Implementation Plan (or SIP) for that State. The SIP is a planning document that, when implemented, is designed to ensure the achievement of the NAAQS. Each State currently has a SIP in place, and the Act requires that SIP revisions be made periodically as necessary to provide continued compliance with the standards.

SIPs include, among other things, the following: (1) An inventory of emission sources; (2) statutes and regulations adopted by the State legislature and executive agencies; (3) air quality analyses that include demonstrations that adequate controls are in place to meet the NAAQS; and (4) contingency measures to be undertaken if an area fails to attain the standard or make reasonable progress toward attainment by the required date.

The State must make the SIP available for public review and comment through a public hearing, it must be adopted by the State, and submitted to EPA by the Governor or her designee. EPA takes Federal action on the SIP submittal thus rendering the rules and regulations Federally enforceable. The approved SIP serves as the State's commitment to take actions that will reduce or eliminate air quality problems. Any subsequent revisions to the SIP must go through the formal SIP revision process specified in the Act.

*C. What Is the Classification of This Area?*

Upon enactment of the 1990 Clean Air Act Amendments (Act), $PM_{10}$ areas meeting the requirements of either (i) or (ii) of section 107(d)(4)(B) of the Act were designated nonattainment for $PM_{10}$ by operation of law and classified ''moderate.'' *See* generally, 42 U.S.C. 7407(d)(4)(B). These areas included all former Group I $PM_{10}$ planning areas identified in 52 FR 29383 (August 7, 1987) and further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the NAAQS for $PM_{10}$ prior to January 1, 1989 (many of these areas were identified by footnote 4 in the October 31, 1990 **Federal Register** document). A **Federal Register** notice announcing the areas designated nonattainment for $PM_{10}$ upon enactment of the 1990 Amendments, known as ''initial'' $PM_{10}$ nonattainment areas, was published on March 15, 1991 (56 FR 11101). A subsequent **Federal Register** document correcting some of these areas was published on August 8, 1991 (56 FR 37654). These nonattainment designations and moderate area classifications were codified in 40 CFR part 81 in a **Federal Register** document published on November 6, 1991 (56 FR 56694). All other areas in the nation not designated nonattainment at enactment were designated unclassifiable (see section 107(d)(4)(B)(iii) of the Act).

In January and February of 1991, we notified the Governors of those States which recorded violations of the $PM_{10}$ standard after January 1, 1989 that EPA believed that those areas should be redesignated as nonattainment for $PM_{10}$. In September 1992 we proposed that several areas be redesignated nonattainment for $PM_{10}$ and took final action on December 21, 1993 (58 FR 67335). Bullhead City was among those areas listed. The effective date of the final action redesignating this area as nonattainment for the $PM_{10}$ NAAQS was January 20, 1994.

*D. What Are the Applicable CAA Provisions for $PM_{10}$ Moderate Area Plans?*

The air quality planning requirements for moderate $PM_{10}$ nonattainment areas are set out in subparts 1 and 4 of title I of the Act. We have issued guidance in a General Preamble describing our views on how we will review SIPs and SIP revisions submitted under title I of the Act, including those containing moderate $PM_{10}$ nonattainment area SIP provisions. 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992). The General Preamble provides a detailed discussion of our interpretation of the Title I requirements.

1. Statutory Provisions

States with initial moderate $PM_{10}$ nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

(a) Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

(b) Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

(c) Pursuant to section 189(c)(1), for plan revisions demonstrating attainment, quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

(d) Provisions to assure that the control requirements applicable to major stationary sources of $PM_{10}$ also apply to major stationary sources of $PM_{10}$ precursors, except where the Administrator determines that such sources do not contribute significantly to $PM_{10}$ levels which exceed the NAAQS in the area.

In addition, States must submit a permit program for the construction of new and modified major stationary sources in 1992 and contingency measures in 1993. *See* sections 189(a) and 172(c)(9).

2. Clean Data Area Approach

The clean data areas approach applies the clean data policy concept already in place for ozone to selected $PM_{10}$ nonattainment areas in order to approve control measures for these areas into the SIP. The approach only applies to $PM_{10}$ areas with simple $PM_{10}$ source problems, such as residential wood combustion and fugitive dust problems. If an area meets the following requirements, the State will no longer be required to develop an attainment demonstration. The requirements for the approach are:

(a) The area must be attaining the $PM_{10}$ NAAQS with the three most recent years of quality assured air quality data.

(b) The State must continue to operate an appropriate $PM_{10}$ air quality

monitoring network, in accordance with 40 CFR part 58, in order to verify the attainment status of the area.

(c) The control measures for the area, which were responsible for bringing the area into attainment, must be approved by EPA. EPA would also need to find that the area has adopted RACM/RACT, and make a finding that the area attained the 24-hour and annual $PM_{10}$ NAAQS.

(d) An emissions inventory must be completed for the area. In addition to the above requirements for the use of the clean data areas approach, any requirements that are connected solely to designation or classification, such as new source review (NSR) and RACM/RACT, will remain in effect. However, the requirements under CAA section 172(c) for developing attainment demonstrations, RFP demonstrations and contingency measures are waived due to the fact that the areas which are eligible under this approach have already attained the $PM_{10}$ NAAQS and have met RFP.

Any sanctions clocks that may be running for an area due to failure to submit, or disapproval of any attainment demonstration, RFP or contingency measure requirements, are stopped. In addition, areas are still required to demonstrate transportation conformity using the build/no-build test, or the no-greater-than-1990 test. 40 CFR 93.119. The emissions budget test would not be required, because the requirements for an attainment demonstration and RFP, which establish the budgets, no longer apply. The applicable tests for general conformity still apply. The use of the clean data areas approach does not constitute a CAA section 107(d) redesignation, but only serves to approve nonattainment area SIPs required under Part D of the CAA.

*E. What are the applicable provisions for $PM_{10}$ maintenance plans?*

1. Statutory Provisions

CAA section 175A provides the general framework for maintenance plans. The maintenance plan must provide for maintenance of the NAAQS for at least 10 years after redesignation, and must include any additional control measures as may be necessary to ensure such maintenance. In addition, maintenance plans are to contain such contingency provisions as we deem necessary to assure the prompt correction of a violation of the NAAQS that occurs after redesignation. The contingency measures must include, at a minimum, a requirement that the State will implement all control measures contained in the nonattainment SIP prior to redesignation. Beyond these provisions, however, CAA section 175A does not define the content of a maintenance plan. Our primary guidance on maintenance plans and redesignation requests is a September 4, 1992 memo from John Calcagni, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (''Calcagni memo'').

2. Limited Maintenance Plan (LMP) Option

On August 9, 2001, EPA issued new guidance on streamlined maintenance plan provisions for certain moderate $PM_{10}$ nonattainment areas seeking redesignation to attainment (Memo from Lydia Wegman entitled ''Limited Maintenance Plan Option for Moderate $PM_{10}$ Nonattainment Areas''). This policy allows maintenance plans for areas having a low risk of future exceedances to omit air quality modeling, future year emission inventories, and some of the standard analyses to determine transportation conformity with the SIP.

To qualify for the LMP option, the area should be maintaining the NAAQS, and the average $PM_{10}$ design value for the area, based upon the most recent 5 years of air quality data at all monitors in the area, should be at or below 40 ug/$m^3$ for the annual and 98 ug/$m^3$ for the 24 hour $PM_{10}$ NAAQS with no violations at any monitor in the nonattainment area. See section IV of the LMP Option memo cited above. The 40 and 98 ug/$m^3$ limits are margin of safety (MOS) limits for the relevant $PM_{10}$ standard for a given area. In addition, the area should expect only limited growth in on-road motor vehicle $PM_{10}$ emissions (including fugitive dust) and should have passed a motor vehicle regional emissions analysis test.

As discussed below in Section IV.B.1, the State has demonstrated that the LMP option is appropriate for the Bullhead City nonattainment area.

*F. What Are the Applicable Provisions for Redesignation to Attainment for $PM_{10}$?*

The 1990 CAA Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment:

(1) The area must have attained the applicable NAAQS;

(2) The area has met all relevant requirements under section 110 and Part D of the Act;

(3) The area has a fully approved SIP under section 110(k) of the Act;

(4) The air quality improvement must be due to permanent and enforceable reductions; and,

(5) The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

**III. Revision to the Boundary**

*A. What Boundary Change Has the State Proposed?*

The Bullhead City nonattainment area contains the equivalent of about six townships within more than 200 square miles (40 CFR 81.303). Bullhead City is located in the east-central part. The existing Bullhead City nonattainment area is defined by the following townships:

T21N, R20–21W, excluding Lake Mead National Recreational Area

T20N, R20–22W

T19N, R21–22W, excluding the Fort Mohave Indian Reservation

Although the modeling domain of the nonattainment area extends into eastern portions of Clark County, Nevada, the actual nonattainment area only includes portions of Mohave County, Arizona.

The ADEQ has proposed shrinking the area to exclude the following 3 townships (108 square miles) in the east and south of the nonattainment area as defined in 40 CFR 81.303: T21N, R20W; T20N, R20W; and T19N, R21W. As a result, the nonattainment and maintenance area would be:

T21N, R21W, excluding Lake Mead National Recreational Area

T20N, R21–22W

T19N, R22W, excluding the Fort Mohave Indian Reservation.

*B. Is the Boundary Change Approvable?*

The State's rationale for shrinking the nonattainment area is that the land proposed for exclusion is undisturbed desert terrain, without industrial or commercial activity. A July 2001 field study confirmed this to be the case, and no development is anticipated in the foreseeable future. The majority of the three townships is Federal land managed by the Bureau of Land Management and State land managed by the Arizona State Land Department.

CAA Section 107(d)(3)(D) authorizes states to submit revised designations, and gives us authority to approve such redesignations if they do not interfere with the effectiveness or enforceability of the applicable SIP. Since the State has provided evidence that the excluded area will remain undisturbed desert for the foreseeable future, EPA approves the boundary revision.

## IV. Review of the Arizona State Submittal Addressing these Provisions

*A. Moderate Area Plan*

1. Did the State meet the CAA procedural provisions?

Prior to adoption by the State, the plan received proper public notice and was the subject of a public hearing in Bullhead City on December 18, 2001.[2]

2. Has the State demonstrated that the area qualifies for the clean data policy?

a. *Based on the past 3 years of air quality data, is the area attaining both the 24-hour and annual $PM_{10}$ NAAQS?* An area has attained the 24-hour standard when the average number of expected exceedances per year is less than or equal to one, when averaged over a three-year period. (40 CFR 50.6) To make this determination, three consecutive years of complete ambient air quality data were collected in accordance with Federal requirements (40 CFR part 58, including appendices). On February 15, 2002, EPA issued a determination that the Bullhead City area had attained the $PM_{10}$ NAAQS. 67 FR 7082.

The Bullhead City area has one $PM_{10}$ monitoring site located at the United States Post Office building at the northeast corner of State Route 95 and 7th Street. There have been no recorded exceedances of either the annual or 24-hour $PM_{10}$ NAAQS in the area. The area has attained both the annual and 24-hour $PM_{10}$ NAAQS for the past 3 years. Indeed, the last exceedance of the 24-hour NAAQS occurred on May 30, 1991, and the last exceedance of the annual NAAQS was a 52 ug/$m^3$ concentration for 1989. Thus, the submittal demonstrates that the area has met the ambient attainment requirements for both the 24-hour and annual $PM_{10}$ NAAQS.

b. *Is the State continuing to operate an appropriate $PM_{10}$* air quality monitoring network? Demonstrating that an area has attained the $PM_{10}$ NAAQS involves submittal of ambient air quality data from an ambient air monitoring network representing peak $PM_{10}$ concentrations, which should be stored in the EPA Aerometric Information Retrieval System (AIRS). Once the area has been redesignated, the State will continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The maintenance plan contains provisions for continued operation of air quality monitors that provide such verification. ADEQ has committed to continue operating an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. This commitment satisfies the obligation to maintain an adequate monitoring program in the area.

c. *Has EPA approved the control measures responsible for bringing the areas into attainment?* The measures implemented in Bullhead City beginning in 1990 and used for the attainment demonstration are listed below:

1. During active construction projects on State roads, the Arizona Department of Transportation (ADOT) paved intersecting unpaved roads up to the State road alignment.

2. Mohave County paved unpaved parking areas and roadways, and added sidewalks, curbs, and gutters in Davis Camp Park.

3. ADOT paved shoulders and installed curbs along Arizona State Highway 95.

4. Mohave County paved 8.85 miles of roads that were unpaved in 1989. Bullhead City paved more than 12 miles of roads that were unpaved in 1989.

5. Bullhead City paved more than 12 miles of previously unpaved roads in 1989.

6. ADEQ implemented Arizona Administrative Code R18–2–607 that requires control of storage piles to minimize fugitive emissions.

Implementation of these measures helped bring the area into timely attainment of both the 24-hour and annual $PM_{10}$ NAAQS, and the measures thus meet the CAA requirement for RACM. Measures 1–5 are fully constructed and are permanent by their very nature. Measure 6 has previously been approved by EPA and remains a Federally enforceable component of the SIP. Therefore, we conclude that the submittal demonstrates that the controls responsible for bringing the area into attainment have been fully carried out or are fully approved SIP regulations.

In addition to these permanent or SIP enforceable controls, the following strategies are also employed in the Bullhead City area: ADOT established contract specifications requiring erosion control plans for State construction projects in $PM_{10}$ nonattainment areas per standard specification 104.9; ADOT implemented Encroachments in Highway Rights-of-Way, Rule No. R17–3–712, which authorizes ADOT to issue permits to allow private landowners and tenants egress onto the State Highway System (in 1988, the section was renumbered, without change, as R17–3–702) but directs mitigation of trackout nuisances; Bullhead City implemented a grading ordinance requiring control of dust during grading and excavation and requiring that property be left in a condition that prevents dust from arising; and smoke management plan requirements were implemented by the Forest Service, Bureau of Land Management, and Arizona Department of State Lands, in cooperation with ADEQ. These supplemental strategies contributed still further fugitive dust emission reductions and public health protection. Continued implementation of the measures will help ensure that the Bullhead City area maintains the 24-hour and annual $PM_{10}$ NAAQS.

3. Do the emissions inventories meet CAA provisions?

The Bullhead City plan includes emission inventories for 1999 to show emission levels in a recent, representative year during which there were no violations of the $PM_{10}$ standards. This inventory is summarized in Table IV–1, while Table IV–4 presents an inventory of industrial sources, all of which emit less than 3 tons per year of $PM_{10}$. This inventory is consistent with our most recent guidance on emission inventories for nonattainment areas, and reflects the latest information available, including 2000 census data.[3] We approve the emissions inventory under CAA section 172(c)(3) as current, accurate, and complete.

4. Do the plans meet the CAA provisions for RACM and RACT?

The measures listed above in Section IV.A.2.c. reflect effective control for an important emissions category in the Bullhead City area: reentrained dust from traffic on paved and unpaved roads. These measures, along with the cessation of a singular construction project more than 10 years ago, were implemented expeditiously and have proven sufficient to prevent violations of the NAAQS over the past 10 years. We therefore conclude that the controls reflect RACM and we approve the plan as meeting the RACM provisions of CAA Section 189(a)(1)(C).

CAA Section 189(e) requires RACT provisions for gaseous precursors of $PM_{10}$ except where EPA determines that such sources do not contribute

[2] In June 1995, ADEQ submitted a $PM_{10}$ plan for Bullhead City. That plan, which addressed the moderate SIP provisions, is superseded by the current submittal, which covers both moderate plan and maintenance plan provisions.

[3] *$PM_{10}$ Emission Inventory Requirements,* EPA–450/2–93, USEPA 1993. Emissions factors were generally derived using methodologies from the *Procedures Document for National Emission Inventory, Criteria Air Pollutants 1985–1999* (NEI Procedures), USEPA 2001.

significantly to $PM_{10}$ levels exceeding the standard. There are no major stationary sources in the nonattainment area, and total emissions associated with all industrial sources account for only 0.18 percent of $PM_{10}$ emissions in 1999. For this reason and because the historic violations of the $PM_{10}$ NAAQS were the direct result of massive highway construction activities in the late 1980's, no sources within the Bullhead City area are subject to the RACT requirement, either with respect to primary or secondary $PM_{10}$ emissions.

5. Are the CAA provisions for new source review satisfied?

For the Bullhead City nonattainment area, ADEQ administers the preconstruction review and permitting provisions of Arizona Administrative Code, Title 18, Chapter 2, Articles 1, 3, 4, and 5. All new major sources and modifications to existing major sources are subject to the new source review (NSR) and prevention of significant deterioration (PSD) requirements of these rules. We have not yet fully approved the State's NSR rules but, for major sources and modifications of $PM_{10}$ emissions, we have delegated to Arizona the authority to administer the PSD program.

Section 172(c)(5) requires NSR permits for the construction and operation of new and modified major stationary sources anywhere in nonattainment areas. We have determined that areas being redesignated from nonattainment to attainment do not need to comply with the requirement that an NSR program be approved prior to redesignation provided that the area demonstrates maintenance of the standard without part D nonattainment NSR in effect. The rationale for this decision is described in a memorandum from Mary Nichols dated October 14, 1994 (''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment''). We have determined that the ADEQ maintenance demonstration for Bullhead City does not rely on nonattainment NSR and, therefore, the State need not have a fully approved nonattainment NSR program prior to approval of the redesignation request. The ADEQ's PSD program at 40 CFR 52.21 will become effective in the area with respect to $PM_{10}$ upon redesignation of the area to attainment, pursuant to the delegation agreement between EPA and ADEQ dated March 12, 1999.

*B. Maintenance Plan*

1. Has the State demonstrated that the area qualifies for the LMP option?

Section II.E. of the plan discusses how the area meets each of the LMP option criteria for use of this option.

First, the area should be attaining the NAAQS. Table III–2 of the plan summarizes quality assured ambient data showing that the Bullhead City area has continued to meet both the 24-hour and annual $PM_{10}$ NAAQS for the period 1996–2000.

Second, the design values for the past 5 years must be at or below the margin of safety levels identified in the LMP option. The annual average $PM_{10}$ design value for the area from 1996 through 2000 data is 17 ug/$m^3$, and the 24-hour average design value is 79 ug/$m^3$, both of which are below the MOS limits of 40 and 98 ug/$m^3$, respectively.

Third, the area must meet the motor vehicle regional emissions analysis test in the LMP option. The calculated value is 18 ug/$m^3$ for the annual average $PM_{10}$ standard, which is less than the 40 ug/$m^3$ MOS limit for annual, and the calculated value is 84 ug/$m^3$ for the 24-hour average $PM_{10}$ standard, which is less than the 98 ug/$m^3$ MOS limit.

Therefore, the State has shown that the area qualifies for the streamlined maintenance plan provisions under the LMP option. We have concluded in Sections IV.A. that the plan submittal meets the moderate area plan provisions for emissions inventories, permanent and enforceable control measures, and maintenance of adequate monitoring. There is one remaining maintenance plan provision under the LMP option not previously discussed: contingency measures.

2. Does the plan meet the CAA provisions for contingency measures?

The maintenance plan must include contingency control measures which will go into effect automatically to correct any future violation of the NAAQS. These provisions must include a requirement that the State will implement all measures contained in the nonattainment area SIP. The August 9, 2000 LMP option memo states that the contingency measures do not have to be fully adopted at the time of redesignation.

ADEQ has included 9 contingency measures in the maintenance plan (*see* table below entitled ''Bullhead City Area Contingency Measures'').

BULLHEAD CITY AREA CONTINGENCY MEASURES

| Contingency measures | Implementing entity |
|---|---|
| Review of Bullhead City grading ordinance to determine if additional action is needed (Bullhead City Zoning Regulation, Chapter 15.40 Grading [September 1998]). | Bullhead City. |
| Pave unpaved roads located in the $PM_{10}$ maintenance area | Bullhead City and/or Mohave County. |
| Pave additional unpaved parking areas in Davis Camp Park (South Beach parking areas) | Mohave County. |
| Continuation of standards for the installation and maintenance of landscaping and screening (Bullhead City Zoning Regulation, Chapter 17.48, Landscaping and Screening Regulations). | Bullhead City. |
| Continuation of cleanup of roadways after rainstorms | Mohave County. |
| Continuation of the requirement for all commercial establishments to pave parking lots (Mohave County Zoning Regulations, Section 26 Off-Street Parking Standards). | Mohave County. |
| Continuation of Smoke Management Plan—State and Federal land managers conducting prescribed burning must register with ADEQ for proposed burning activities—Arizona Administrative Code (A.A.C) R–18–2–Article 15 (Forest & Range Management Burns). | U.S. Forest Service, U.S. Bureau of Land Management, Arizona State Land Department, ADEQ. |
| Review of the requirement for dust control measures for material storage piles to determine if additional action is needed (A.A.C. R–18–2–607). | ADEQ. |

The State also committed to determine whether or not violations have been recorded within 6 months of the close of each calendar year, and to review and determine the appropriate contingency measure(s) by the end of the same calendar year. Finally, the State committed to implement the selected contingency measure(s) within 1 year of determining that a violation has occurred. We conclude that these measures and commitments meet the contingency measure provision of CAA Section 175A(d).

*C. Redesignation Requests*

1. Has Bullhead City attained the 24-hour and annual $PM_{10}$ NAAQS?

The area has attained the 24-hour standard when the average number of expected exceedances per year is less than or equal to one, when averaged over a three-year period. (40 CFR 50.6) To make this determination, three consecutive years of complete ambient air quality data were collected in accordance with Federal requirements (40 CFR part 58, including appendices).

As discussed above, there have been no recorded exceedances of either the annual or 24-hour $PM_{10}$ NAAQS in the area in the past 3 years. The area has attained both the annual and 24-hour $PM_{10}$ NAAQS for the past 3 years.

2. Has the area met all relevant requirements under section 110 and Part D of the Act?

The Calcagni memo directs States to meet all of the applicable section 110 and part D planning requirements for redesignation purposes. EPA interprets the Act to require State adoption and EPA approval of the applicable programs under section 110 and part D that were due prior to the submittal of a redesignation request, before EPA may approve a redesignation request.

Section 110(a)(2) of the Act contains general requirements for nonattainment plans. These requirements include, but are not limited to, submittal of a SIP that has been adopted by the State after reasonable notice and public hearing, provisions for establishment and operation of appropriate apparatus, methods, systems, and procedures necessary to monitor ambient air quality, implementation of a permit program, provisions for Part C—Prevention of Significant Deterioration (PSD) and Part D—New Source Review (NSR) permit programs, criteria for stationary source emission control measures, monitoring and reporting, provisions for modeling, and provisions for public and local agency participation.

Part D includes additional provisions for nonattainment areas, listed generally in CAA section 172(c) and specifically for $PM_{10}$ in sections 188–9. These additional Part D provisions include: implementation of RACM as expeditiously as practicable, reasonable further progress, emissions inventories, and quantification of growth allowances (if the State elects to establish such allowances). *See* the General Preamble for further explanation of these requirements.

For purposes of redesignation, the Arizona SIP was reviewed to ensure that all requirements under the Act were satisfied. The Arizona SIP was approved under section 110 of the Act as satisfying all applicable section 110 and Part D provisions. These approvals are codified in 40 CFR 52.123. We are approving the SIP with respect to the special Part D provisions for $PM_{10}$ nonattainment areas (CAA sections 188–9) in Section IV.A. above.

3. Does the Bullhead City Area have a fully approved SIP under section 110(k) of the Act?

We are approving in today's action the moderate area and maintenance plan for the Bullhead City Area, and confirming that the SIP meets other applicable provisions of the CAA.

4. Has the State shown that the air quality improvement in the area is permanent and enforceable?

The submittal shows that the improvements in air quality were not due to temporary economic downturn or unusually favorable meteorology (p. 14). On the contrary, economic growth has continued over the past 10 years since the area attained the NAAQS, and the area has experienced the full range of weather conditions in that period. As discussed above, attainment is the result of the cessation of unusual construction activities and the establishment of permanent and enforceable controls on fugitive dust emissions.

5. Does the area have a fully approved maintenance plan pursuant to section 175A of the Act?

We are fully approving the maintenance plan, as allowed by the LMP guidance, in Section IV.B. above.

*D. Conformity*

The transportation conformity rule and the general conformity rule apply to nonattainment areas and attainment areas with maintenance plans. Both rules provide that conformity can be demonstrated by showing that the expected emissions from planned actions are consistent with the emissions budget for the area.

1. Transportation Conformity

Under the limited maintenance plan option, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that qualifying areas would experience so much growth in that period that a NAAQS violation would result.

While areas with maintenance plans approved under the limited maintenance plan option are not subject to the budget test, the areas remain subject to other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the State will still need to document and ensure that: (1) Transportation plans and projects provide for timely implementation of SIP transportation control measures (TCMs) in accordance with 40 CFR 93.113; (2) transportation plans and projects comply with the fiscal constraint element per 40 CFR 93.108; (3) the MPO's interagency consultation procedures meet applicable requirements of 40 CFR 93.105; (4) conformity of transportation plans is determined no less frequently than every three years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104; (5) the latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111; (6) projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and (7) project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

The adequacy review period for these SIP submissions is concurrent with the public comment period on this direct final rule. Because limited maintenance plans do not contain budgets, the adequacy review period for these maintenance plans serves to allow the public to comment on whether limited maintenance is appropriate for these areas. Interested parties may comment on the adequacy and approval of the limited maintenance plans by submitting their comments on the proposed rule published concurrently with this direct final rule.

Our action on the limited maintenance plans for these areas will also be announced on EPA's conformity Web site: *http://www.epa.gov/oms/traq*. Once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity.''

2. General Conformity

For Federal actions which are required to address the specific requirements of the general conformity rule, one set of requirements applies particularly to ensuring that emissions from the action will not cause or contribute to new violations of the NAAQS, exacerbate current violations, or delay timely attainment. One way that this requirement can be met is to demonstrate that ''the total of direct and indirect emissions from the action (or portion thereof) is determined and

documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment area, would not exceed the emissions budgets specified in the applicable SIP.'' 40 CFR 93.158(a)(5)(i)(A).

The decision about whether to include specific allocations of allowable emissions increases to sources is one made by the State and local air quality agencies. Such emissions budgets are unlike and not to be confused with those used in transportation conformity. Emissions budgets in transportation conformity are required to limit and restrain emissions. Emissions budgets in general conformity allow increases in emissions up to specified levels.

ADEQ has not chosen to include any specific emissions allocations for Federal projects that would be subject to the provisions of general conformity.

**V. Final Action**

We are approving the boundary revision, the moderate area plan, and the maintenance plan for the Bullhead City Area, and we are redesignating the area from nonattainment to attainment for the 24-hour and annual $PM_{10}$ NAAQS. We are 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 and redesignate the area if relevant adverse comments are filed. This rule will be effective August 26, 2002, without further notice unless relevant adverse comments are received by July 26, 2002. If we receive such comments, this action will be withdrawn before the effective date. All public comments received will then be addressed in a subsequent final rule based on the proposed action. We will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective August 26, 2002.

**V. 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. section 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. section 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 August 26, 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**

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 6, 2002.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

Chapter I, title 40 of the Code of Federal Regulations 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 *et seq.*

**Subpart D—Arizona**

2. Section 52.120 is amended by adding paragraph (c)(103) to read as follows:

**§ 52.120 Identification of plan.**

* * * * *

(c) * * *

(103) The following plan was submitted on February 7, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(1) Bullhead City Moderate Area $PM_{10}$ Maintenance Plan and Request for Redesignation to Attainment, adopted on February 7, 2002.

* * * * *

**PART 81—[AMENDED]**

1. The authority citation for part 81 continues to read as follows:

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

2. In § 81.303 the $PM_{10}$ table is amended by revising the entry for the Mohave County (part) to read as follows:

**§ 81.303 Arizona.**

* * * * *

ARIZONA—$PM_{10}$

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| * * | * | * * | * | * |
| Mohave County (part): Bullhead City: T21N, R21W, excluding Lake Mead National Recreation Area: T20N, R21–22W; T19N, R22W excluding Fort Mohave Indian Reservation. | August 26, 2002 ..... | Attainment. | | |

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 02–16143 Filed 6–25–02; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

**[FRL–7237–2]**

**Wisconsin: Final Authorization of State Hazardous Waste Management Program Revision**

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is granting Wisconsin final authorization of revisions to their hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Agency published a proposed rule on March 1, 2002 at 67 FR 9427 and provided for public comment. The public comment period ended on April 1, 2002. We received two comments, addressed below. The Agency had also published an immediate final rule on March 1, 2002, granting Wisconsin authorization for the revisions to their RCRA Program, subject to public comment; but withdrew that immediate final rule on April 22, 2002, so that it could respond to the comments before the rule went into effect. EPA is authorizing the State's changes through this final action. After reviewing the comments, we hereby determine that Wisconsin's hazardous waste program revisions satisfies all requirements necessary to qualify for final authorization. No further opportunity for comment will be provided.

**EFFECTIVE DATE:** Final authorization for the revisions to Wisconsin's hazardous waste management program shall be effective on June 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jean Gromnicki, Wisconsin Regulatory Specialist, U.S. Environmental Protection Agency, Waste, Pesticides and Toxics Division (DM–7J), 77 West Jackson Boulevard, Chicago, Illinois 60604, phone number: (312) 886–6162; or Ms. Patricia Chabot, Wisconsin Department of Natural Resources, 101 North Webster, Madison, Wisconsin, 53707, phone: (608) 264–6015.

**A. Why Are Revisions to State Programs Necessary?**

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with and no less stringent than the Federal Program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

**B. What Were the Comments and Responses to EPA's Proposal?**

A commenter from the State of Washington submitted a comment alleging that EPA: (1) Should have hosted a public hearing; and (2) should have reviewed Wisconsin Chapter NR 538 on land application of nonhazardous waste. Noting that RCRA covers both solid and hazardous waste management, the commenter asks EPA to ''include a review of Chapter NR 538 for consistency with Wisconsin's statutes prior to approval of Wisconsin's application for final RCRA authorization.'' For the reasons discussed below, this authorization action is not the appropriate forum for these comments.

*1. Public Hearing*

EPA is authorizing Wisconsin for a revision to its program, and is not required to hold a hearing for a revision. Wisconsin, which received final authorization for its RCRA program on January 31, 1986, is applying for a revision to its already authorized program to reflect revisions that have been made to the Federal RCRA Subtitle C program. The regulations governing review of program revisions at 40 CFR part 271 do not require a hearing for authorization of revisions. On March 4, 1986, EPA promulgated amendments to 40 CFR 271.21 that eliminated public hearing requirements for revisions. In the preamble, the Agency discussed this change:

As discussed in the proposal, the new procedures do not require public

hearings to be held in conjunction with EPA's authorization decisions. Since there is no legal requirement to provide for hearings on revision decisions and little public interest has been shown to date in attending hearings on initial authorization of State programs, we think the opportunity to provide written comments is adequate. Only one comment was received on the elimination of routine public hearings, and that comment favored the rule change* * *.

51 *FR* 7540 at 7541 (March 4, 1986).

*2. Wisconsin Administrative Code Chapter NR 538*

The comment regarding Chapter NR 538 of the Wisconsin Administrative Code is not relevant to this action because: (1) EPA is not authorizing Chapter NR 538, which explicitly excludes hazardous wastes from its application; (2) that Chapter does not affect the hazardous waste regulations, and (3) EPA's review of this application does not extend to that Chapter's consistency with Wisconsin law.

This action authorizes certain state hazardous waste regulations under subchapter III of RCRA. The regulations EPA is authorizing in this action do not include Chapter NR 538, which pertains to land application of non-hazardous waste.

Chapter NR 538 does not affect the regulations EPA is authorizing in this action. By its terms, that chapter does not apply to hazardous wastes:

NR 538.02 Applicability. (1) Except as otherwise provided, this chapter governs the beneficial use of industrial byproducts, *except hazardous waste* and metallic mining waste. (*Emphasis added*)

While both solid waste and its subset hazardous waste are regulated under the umbrella of the Resource Conservation and Recovery Act (RCRA), that statute contains different subchapters for governing the content, criteria and administration of hazardous waste programs and solid waste plans. Subchapter III of RCRA governs hazardous waste management. EPA's authority to ''authorize'' a state to administer and enforce a ''hazardous waste program'' under subchapter III of RCRA (*see* section 3006 of RCRA, 42 U.S.C. 6926) does not constitute ''approval'' of either a State solid waste plan (*see* section 4007(a) of RCRA, 42 U.S.C. 6947(a)) or a solid waste management facility permit program (*see* section 4005(c) of RCRA, 42 U.S.C. 6945(c)) under subchapter IV of RCRA. The criteria for authorization of a State hazardous waste program are set forth at section 3006 of RCRA. In reviewing an application under this section, EPA considers whether the State program (1) is equivalent to the Federal program under subchapter III, which governs hazardous waste; (2) is consistent with Federal or ''State programs applicable in other States;'' and (3) provides adequate enforcement of compliance with the requirements of subchapter III of RCRA. As part of this review, EPA considers whether the State is imposing requirements less stringent than those authorized under subchapter III respecting the same matter as governed by such regulation. (*See* sections 3006 and 3009 of RCRA, 42 U.S.C. 6926 and 6929.) The commenter's request for EPA to review Wis. Admin. Code Chapter NR 538, which explicitly does not apply to hazardous waste, for consistency with Wisconsin's statutes falls outside the scope of our review of Wisconsin's application for the hazardous rules authorized herein.

For the reasons set forth above the comment on Wisconsin Administrative Code Chapter NR 538 is not relevant to this action.

**C. What Decisions Have We Made in This Rule?**

We conclude that Wisconsin's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are granting Wisconsin Final authorization to operate its hazardous waste program with the changes described in the authorization application. Wisconsin has responsibility for permitting Treatment, Storage and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Wisconsin, including issuing permits, until the State is granted authorization to do so.

**D. What Will Be the Effect of Today's Action?**

The effect of this decision is that a facility in Wisconsin subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Additionally, such persons must comply with any applicable Federally-issued requirements, such as, for example, HSWA regulations issued by EPA for which the State has not received authorization, and RCRA requirements that are not supplanted by authorized state-issued requirements. Wisconsin continues to have enforcement responsibilities under its state hazardous waste program for violation of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include among others, authority to:

A. Do inspections, and require monitoring, tests, analyses or reports.

B. Enforce RCRA requirements and suspend or revoke permits.

C. Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Wisconsin is being authorized by today's action are already effective, and are not changed by today's action.

**E. What Has Wisconsin Previously Been Authorized For?**

Wisconsin initially received Final Authorization on January 30, 1986, effective January 31, 1986 (51 *FR* 3783), to implement its base hazardous waste management program. Wisconsin received authorizations for revisions to its program on May 23, 1989, effective June 6, 1989 (54 *FR* 15029); on November 22, 1989, effective January 22, 1990 (54 *FR* 48243); on April 24, 1992, effective April 24, 1992 (57 *FR* 15029); on June 2, 1993, effective August 2, 1993 (58 *FR* 31344); on August 4, 1994, effective October 4, 1994 (59 *FR* 39971); and on August 5, 1999, effective October 4, 1999 (64 *FR* 42630).

**F. What Changes Are We Authorizing With Today's Action?**

On November 5, 2001, Wisconsin submitted a final complete program revision application seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a final decision, that Wisconsin's hazardous waste program revisions satisfies all of the requirements necessary to qualify for Final authorization. Therefore we grant Wisconsin Final authorization for the following program changes:

| Description of Federal requirement (Checklist #) | Federal Register date and page | Analogous State authority |
|---|---|---|
| Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection (Checklist 128). | 59 *FR* 458–469 January 4, 1994 | NR 600.10(2) 605 (Appendix IV) Effective June 1, 1998 |
| Revision of Conditional Exemption for Small Scale Treatability Studies (Checklist 129). | 59 *FR* 8362–8366 February 18, 1994 | NR 605.05(9)–(11) Effective June 1, 1998 |
| Recycled Used Oil Management Standards; Technical Amendments and Corrections II (Checklist 130). | 59 *FR* 10550–10560 March 4, 1994 | NR 590.03(33m), 590.04(1), 590.10(3), 590.11, 590.12(2), 590.36(1), 590.37(1)–(2), 590.50(3) Effective June 1, 1998 |
| Wood Surface Protection; Correction (Checklist 132). | 59 *FR* 28484 June 2, 1994 | NR 600.10(2) Effective June 1, 1998 |
| Letter of Credit Revision (Checklist 133) | 59 *FR* 29958–29960 June 10, 1994 | NR 685.07(5) Effective June 1, 1998 |
| Correction of Beryllium Powder (PO15) Listing (Checklist 134). | 59 *FR* 31551–31552 June 20, 1994 | NR 605.09 (Table IV), 605 Appendix IV, 675.20/Table Effective June 1, 1998 |
| Recovered Oil Exclusion (Checklist 135) | 59 *FR* 38536–38545 July 28, 1994 | NR 605.04(1), 605.05(1)–(2), 625.07(2) Effective June 1, 1998 |
| Removal of the Conditional Exemption for Certain Slag Residues (Checklist 136). | 59 *FR* 43496–43500 August 24, 1994 | NR 625.05(1), 675.20 Effective June 1, 1998 |
| Universal Treatment Standards and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes (Checklist 137). | 59 *FR* 47982–48110 September 19, 1994 as amended at 60 *FR* 242–302 January 3, 1995. | NR 605(2), 630.04(16), 625.05(1), 600.04, 675.03(1m), 675.04(2), 675.03(1), 675.03(7p), 675.07(1)–(2), 675.09(1), (4)–(5), 675.19(1), 675.20(1)–(7), 675.20/Table, 675.21, 675.22, 675.22(1), 675.22 Table1, 675.22(4)–(5), 675.23, 675.25(2), 675.26, 675.28, 675 Appendix III, 675 Appendix VIII Effective June 1, 1998 |
| Testing and Monitoring Activities Amendment I (Checklist 139). | 60 *FR* 3089–3095 January 13, 1995 | NR 600.10(2) Effective June 1,1998 |
| Carbamate Production Identification and Listing of Hazardous Waste (Checklist 140). | 60 *FR* 7824–7859 February 9, 1995 | NR 605.04(1), 605.09 Table III, 605.09 Table IV, 605.09 Table V, 605 Appendix III, Appendix IV Effective June 1, 1998 |
| Testing and Monitoring Activities Amendment II (Checklist 141). | 60 *FR* 17001–17004 April 4, 1995 | NR 600.10(2) Effective June 1, 1998 |
| Universal Waste: General Provisions (Checklist 142 A). | 60 *FR* 25492–25551 May 11, 1995 | NR 600.03, 600.03 (56m), 600.03 (249m),600.03(249p), 600.03 (249z), 610.07(1m), 610.07(1), 690.01, 690.02, 690.04, 615.04, 615.05, 615.06(6), 630.04(17), 605.05(12), 675.04(3), 680.02, 690.04(1)-(2), 690.08(1), 690.03(2), 690.03(4)-(6), 690.03(8), 690.03(10)-(13), 690.10, 690.11, 690.12(2), 690.14, 690.15(1)-(3), 690.16, 690.17(1)-(2), 690.18(1)-(8), 690.19, 690.20, 690.30, 690.31, 690.32(1)-(2), 690.34, 690.35(1)-(3), 690.36, 690.37(1)-(2), 690.38(1)-(8), 690.39(1)-(3), 690.40, 690.50, 690.51, 690.52(1)-(2), 690.53(1)-(2), 690.54(1)-(2), 690.55(1)-(2), 690.56, 690.60(1)-(2), 690.61(1)-(4), 690.62(1)-(2), 690.70 Effective June 1, 1998 |
| Universal Waste Rule: Specific Provisions for Batteries (Checklist 142 B). | 60 *FR* 25492–25551 May 11, 1995 | NR 690.03(1), 690.03(10), 690.02(1), 630.04(17), 625.02, 625.05, 625.12(1), 675.04(3), 690.04(1), 690.05(1)-(3), 690.03, 690.13, 690.14, 690.33, 690.34 Effective June 1, 1998 |
| Universal Waste Rule: Specific Provisions for Pesticides (Checklist 142 C). | 60 *FR* 25492–25551 May 11, 1995 | NR 690.03(7), 690.03(10), 605.05(12), 690.04(1), 630.04(17), 675.04(3), 680.02, 690.06(1)-(4), 690.03(3), 690.03(7), 690.03(10), 690.13(2), 690.14(2)-(3), 690.32(1), 690.33(2), 690.34(2)-(3) Effective June 1, 1998 |
| Universal Waste Rule: Specific Provisions for Thermostats (Checklist 142 D). | 60 *FR* 25492–25551 May 11, 1995 | NR 605.05(12), 630.04(17), 690.04(1), 675.04(3), 680.02, 690.07, 690.03(9)-(10), 690.13(3), 690.14(4), 690.33(3), 690.34(4) Effective June 1, 1998 |
| Universal Waste Rule: Petition Provisions to Add a New Universal Waste (Checklist 142 E). | 60 *FR* 25492–25551 May 11, 1995 | NR 605.10(1)-(2), 605.10(6)-(7), 690.80(1)-(3), 690.81(1)-(8) Effective June 1, 1998 |
| Liquids in Landfills III (Checklist 145) | 60 *FR* 35703–13106 July 11, 1995 | NR 660.18(8) Effective June 1, 1998 |
| RCRA Expanded Public Participation (Checklist 148). | 60 *FR* 63417–63434 December 11, 1995 | NR 680.06(1m), 680.06(8m), 680.06(15), 600.03(104), 680.03(3m), 680.42(18m), 680.07(7), 665.06(1), 665.07(2), 665.06(4), 665.06(1), 665.02 Effective June 1, 1998 |

| Description of Federal requirement (Checklist #) | Federal Register date and page | Analogous State authority |
|---|---|---|
| Amendments to the Definition of Solid Waste: Amendment II (Checklist 150). | 61 *FR* 13103–13106 March 26, 1996 | NR 605.05(1) Effective June 1, 1998 |
| Land Disposal Restriction Phase III Decharacterized Wastewaters, Carbamate Wastes and Spent Potliners (Checklist 151). | 61 *FR* 15566–15660 April 8, 1996 | NR 600.04(1), 675.05(3), 675.03(1m), 675.03(4m), 675.03(7p), 675.03(8), 675.04(2), 675.06(1)-(3), 675.07(1)-(2), 675.09(1), 675.09(4), 675.19(2), 675.20(1), 675.20(6), 675.20, Table, 675.22/Table 1, 675.24(1), 675.28(a) and Table UTS, 675 Appendix IX Effective June 1, 1998 |

### G. Where Are the Revised State Rules Different From the Federal Rules?

Wisconsin has proposed specific parts of Federal Regulation to be more stringent than Federal requirements. These requirements are part of Wisconsin's authorized program and are federally enforceable.

| Description of Federal requirement | Federal citation number (checklist number) | State citation number |
|---|---|---|
| Revision of Conditional Exemption for Small Scale Treatability Studies (Checklist 129). | 261.4(e)(3)(iii)(A) | 605.05(10)(e)1. |
| | 261.4(f)(4) | 605.05(11)(d). |
| Recovered Oil Exclusion (Checklist 135) | 261.3(c)(2)(ii)(B) | 605.04(1)(b)10. |
| | 261.4(a)(12) | 605.05(1)(x). |
| Removal of the Conditional Exemption for Certain Slag Residues (Checklist 136). | 266.20(c) | 625.05(1). |
| Universal Treatment Standards and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes (Checklist 137). | 260.30 intro | There is no Wisconsin waiver to the definition of Solid Waste. |
| | 260.30(b) | |
| | 260.31(a), 260.31(b) | Wisconsin does not have a provision like 260.31(a). Materials that are speculatively accumulated must be managed as hazardous waste (see 605.05(4). |
| | 260.32 intro, 260.33 intro, 260.33(a), 260.33(b). | Wisconsin does not have a boiler variance provision. |
| | 266.23(a) | 625.05(1). |
| | 268.1(c)(3)(ii), 268.1(c)(3)(iii) | 600.04(1). |
| | | 600.04. |
| | 268.7(a)(8) | 675.07(1)(j). |
| | 268.7(b)(4)(ii) | 675.07(2)(d)b. |
| | 268.38(a) | 675.19(1)(a). |
| | 268.38(b) | 675.19(1)(b). |
| Carbamate Production Identification and Listing of Hazardous Waste (Checklist 140). | 261.3(a)(2)(iv)(F), 261.3(a)(2)(iv)(G) | There is no exemption 261.3(a)(2)(iv)(F) or (G) in the Wisconsin Code. |
| | 261.3(c)(2)(ii)(D) | There is no Wisconsin citation for 261.3(c)(2)(ii)(D). |
| Universal Waste Rule: Petition Provisions to Add New Universal Waste (Checklist 145). | 264.314(e)(2)(ii), 264.314(e)(2)(iii), 265.314(f)(2)(ii), 265.314(f)(2)(iii). | 660.18(8)(b) Wisconsin does not allow OECD Test 301B, rules are more restrictive in defining a non-biodegradable sorbents. |
| Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, Spent Potliners (Checklist 151). | 268.1(c)(3), 268.1(c)(3)(i), 268.1(c)(3)(ii), 268.1(c)(3)(iii), 268.1(c)(4), 268.1(c)(4)(i), 268.1(c)(4)(ii), 268.1(c)(4)(iii), 268.1(c)(4)(iv). | 600.04(1) Note: Underground injection is prohibited. |
| | 268.7(a)(1)(vi) | 675.07(a)(d). |
| | 268.39(b) | 674.19(2)(b). |
| | 268.39(c) | 675.19(2)(c). |
| | 268.39(d) | 675.19(2)(e). |
| | 2678.39(f) | 675.19(2)(g). |
| | 268.40(a) | 675.20(1). |
| | 268.40(g) | 675.20(1). |

### H. Who Handles Permits After Authorization Takes Effect?

Wisconsin will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Wisconsin is not yet authorized.

### I. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Wisconsin?

Wisconsin is not authorized to carry out its hazardous waste program in Indian country within the State, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of Indian reservations within or abutting the State of Wisconsin;

2. Any land held in trust by the U.S. for an Indian tribe; and

3. Any other land, whether on or off an Indian reservation that qualifies as Indian country. Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in Indian country.

**J. What Is Codification and Is EPA Codifying Wisconsin's Hazardous Waste Program as Authorized in This Rule?**

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State Rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart YY for this authorization of Wisconsin's program changes until a later date.

**K. Administrative Requirements**

The Office of Management and Budget (OMB) has exempted RCRA authorizations from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore, a decision to authorize Wisconsin for these revisions is not subject to review by OMB. Furthermore, this rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. This authorization will effectively suspend the applicability of certain Federal regulations in favor of Wisconsin's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. Authorization will not impose any new burdens on small entities. Accordingly, I certify that these revisions will not have a significant economic impact on a substantial number of small entities under the Regulator Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes 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 action does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. A decision to authorize Wisconsin for these revisions also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action does not include environmental justice related issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996) in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with any Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the Executive Order. A decision to authorize Wisconsin's revisions will 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 document 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 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).

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This Action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 12, 2002.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 02–16031 Filed 6–25–02; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 25 and 101

**[ET Docket No. 98–206; RM–9147; RM–9245; FCC 02–116]**

## Order To Permit Operation of NGSO FSS Systems Co-Frequency With GSO and Terrestrial Systems in the Ku-Band Frequency Range; Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and in Re Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. in the 2.2–12.7 GHz Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission addresses petitions for reconsideration and establishes technical, service and licensing rules for Multichannel Video Distribution and Data Service (MVDDS) in the 12 GHz band. MVDDS will facilitate the delivery of new communications services, such as video and broadband

services, to a wide range of populations, including those that are unserved or underserved. These rules adopted will allow MVDDS licensees to share the 12 GHz band with new operators on a co-primary basis and on a co-primary, non-harmful interference basis with incumbent Direct Broadcast Satellite service providers.

**DATES:** Effective August 26, 2002, except for §§ 25.139, 101.103, 101.1403, 101.1413, 101.1417 and 101.1440 which contain information collection requirements that have not been approved by OMB. Written comments by the public on the new or modified information collections are due August 26, 2002. Written comments must be submitted by the OMB on the new or modified information collections on or before October 25, 2002. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

**FOR FURTHER INFORMATION CONTACT:** For MVDDS/Direct Broadcast Satellite (DBS) and MVDDS/non-geostationary satellite orbit (NGSO) fixed-satellite services (FSS) sharing issues, contact the Office of Engineering and Technology '' Thomas Derenge at (202) 418–2451, Gary Thayer at (202) 418–2290 or Ira Keltz at (202) 418–0616. For MVDDS service rules, contact the Wireless Telecommunications Bureau '' Michael Pollak, Jennifer Burton, or Brian Wondrack at (202) 418–0680, TTY (202) 418–7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's *Memorandum Opinion and Order and Second Report and Order,* FCC 02–116, adopted on April 11, 2002, and released on May 23, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

**Paperwork Reduction Analysis**

1. This *Second Report and Order* contains either a new or modified information collection. As part of the Commission's continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on revision to the information collections contained in the *Second Report and Order* as required by the Paperwork Reduction Act of 1995. Public and agency comments are due August 26, 2002. Comments should address:

- Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility.
- The accuracy of the Commission's burden estimates.
- Ways to enhance the quality, utility, and clarity of the information collected.
- Ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Written comments by the public on the new or modified information collections are due August 26, 2002. Written comments must be submitted by the OMB on the new or modified information collections on or before October 25, 2002. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov,* and to Jeanette Thornton, OMB Desk Officer, Room 10236 New Executive Office Building, 725 Seventeenth Street, NW., Washington, DC 20503, or via the Internet to *JThornto@omb.eop.gov.*

*OMB Control No.:* 3060–xxxx

*Title:* 25.139 NGSO FSS coordination and information sharing between MVDDS licensees in the 12.2 GHz to 12.7 GHz band.

*Form No:* N/A.

*Type of Review:* New.

*Number of Respondents:* 6.

*Frequency of Response:* On occasion.

*Total Annual Burden:* 6.

*Total Annual Cost:* 0.

*Needs and Uses:* This rule is needed for NGSO FSS licensees to maintain a subscriber database in a format that can be readily shared with MVDDS licensees for the purpose of determining compliance with the MVDDS transmitting antenna spacing requirement relating to qualifying existing NGSO FSS subscriber receivers set forth in § 101.129 of this chapter.

*OMB Control No.:* 3060–xxxx.

*Title:* 101.103 Frequency coordination procedures.

*Form No:* N/A.

*Type of Review:* New collection.

*Frequency of Response:* On occasion.

*Total Annual Burden:* 177 hours.

*Total Annual Cost:* 0.

*Needs and Uses:* This rule is necessary to require MVDDS licensees to provide notice of intent of construct a proposed antenna to NGSO FSS licensees.

*OMB Control No.:* 3060–xxxx.

*Title:* 101.1403 Broadcast Carriage Requirements.

*Form No:* N/A.

*Type of Review:* New.

*Frequency of Response:* On occasion.

*Number of Respondents:* 354.

*Total Annual Burden:* 354.

*Total Annual Cost:* 0.

*Needs and Uses:* This rule is needed for the purpose of coming into compliance with the broadcast carriage requirements.

*OMB Control No.:* 3060–xxxx.

*Title:* 101.1413 License term and renewal expectancy.

*Form No:* N/A.

*Type of Review:* New collection.

*Frequency of Response:* On occasion.

*Total Annual Burden:* 7080 hours.

*Total Annual Cost:* 0.

*Needs and Uses:* The information required in § 101.1413 is used to determine whether a renewal applicant of a MVDDS has complied with the requirements to provide substantial service by the end of the ten-year initial license term. The FCC uses the information to determine whether an applicant's license will be renewed at the end of the license period.

*OMB Control No.:* 3060–xxxx.

*Title:* 101.1417 Annual Report.

*Form No:* N/A.

*Type of Review:* New.

*Frequency of Response:* Annually.

*Total Annual Burden:* 354.

*Total Annual Cost:* 0.

*Needs and Uses:* This rule requires MVDDS licensees to file two copies of a report by March 1 of each year for the preceding calendar year. This report must include name and address of licensee; station(s) call letters and primary geographic service area(s); and statistical information for the licensee's station.

*OMB Control No.:* 3060–xxxx.

*Title:* 101.1440 MVDDS protection of DBS.

*Form No:* N/A.

*Type of Review:* New.

*Frequency of Response:* On occasion.

*Total Annual Burden:* 14,522.

*Total Annual Cost:* 0.

*Needs and Uses:* This rule requires MVDDS licensees conduct a survey to determine the location of all DBS customers of record and obtain a signed written agreement from the DBS

customers of record agreeing to their DBS system receiving MVDSS signal in excess of appropriate EFPD.

1. In this *Memorandum Opinion and Order and Second Report and Order,* we make the following major determinations regarding the licensing of MVDDS in the 12 GHz band:

**MO&O**

- We find that the Commission provided clear notice that the Commission was considering authorizing MVDDS in the 12 GHz band in the *November 24, 1998 Notice of Proposed Rulemaking,* 64 FR 7565 (January 12, 1999) (Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to authorize subsidiary Terrestrial Use of the12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates, ET Docket No. 98–206, ET Docket No. 98–206, 14 FCC Rcd 1131 (1998)), as required by the *Administrative Procedure Act* (5 U.S.C. Chapter 5, *et. seq.*).
- The MVDDS authorization complies with the provisions, and fosters the goals, of the *Satellite Home Viewer Improvement Act of 1999* (SHVIA) and the *Rural Local Broadcast Signal Act* (RLBSA) (Public Law 106–113 Stat. 1501 (enacting S. 1948, including the SHVIA and the RLBSA, Titles I and II of the Intellectual Property and Communications Omnibus Reform Act of 1999)).
- The technical rules and regulatory safeguards we are adopting in the *Second Report and Order* will protect the primary allocation status of incumbent DBS/Broadcast Satellite Service (BSS) and the co-primary NGSO FSS operators in the 12 GHz band.
- The Commission's decision to authorize MVDDS in the 12 GHz band was carefully considered and rationally explained based upon all of the available information in the record.
- The technical rules we are establishing for MVDDS operation are technologically neutral because they do not specify a particular equipment configuration or methodology, proprietary or not, that must be used within the fixed terrestrial MVDDS service.
- The Commission's decision to authorize MVDDS in the 12 GHz band does not violate International Telecommunication Union (ITU) recommendations and constitutes an appropriate exercise of domestic regulatory authority.
- We deny the petitions for reconsideration with respect to the Commission's decision to authorize MVDDS in the 12 GHz band.
- We find to be substantively without merit, and dismiss on our own motion as procedurally untimely, a ''Petition for Consolidation of Rulemaking Proceedings and for a Declaration that Alternative Spectrum is Suitable for the Proposed Multichannel Video Distribution and Data Service,'' which seeks to disallow MVDDS operation in the 12.2–12.7 GHz band and instead seeks consideration of alternative spectrum in the 12.7–13.25 GHz Cable Television Relay Service (CARS) band or the 2500–2690 MHz Multichannel Multipoint Distribution Service (MMDS) in the context of two other rule making proceedings.

**R&O**

- We will require an MVDDS operator to operate with a maximum power limit of 14 dBm per 24 megahertz Effective Isotropic Radiated Power (EIRP).
- We specify an equivalent power flux density (EPFD) limit for each of four regions across the United States. The regions and corresponding EPFD limits are: East: –168.4 dBW/$m^2$/4kHz, Midwest: –169.8 dBW/$m^2$/4kHz, Southwest: –171.0 dBW/$m^2$/4kHz, and Northwest: –172.1 dBW/$m^2$/4kHz.
- Using a prescribed methodology and a predictive model to calculate EPFD values, we used a criterion that would limit the amount of increased BSS unavailability due to the presence of MVDDS to ten percent over a baseline level of BSS unavailability. The unavailability allowance ascribed to MVDDS is in addition to the unavailability allowance ascribed to NGSO FSS operations in the 12.2–12.7 GHz band.
- MVDDS must site and design its transmitting antennas to avoid causing harmful interference to existing DBS customers.
- We will require the MVDDS operator to ensure that the prescribed EPFD limits are not exceeded at any DBS customer of record location. If the EPFD limits are exceeded, the MVDDS operator will be required to discontinue service until such time that the limits can be met.
- To promote MVDDS and NGSO FSS band sharing, MVDDS signals shall not exceed a power flux density (PFD) of −135dBW/$m^2$/4kHz measured and/or calculated at the surface of the earth at distances greater than 3 km from the MVDDS transmitting site.
- We adopt a minimum MVDDS transmitting antenna spacing of 10 km from pre-existing NGSO FSS receive antennas with the option for NGSO FSS licensee agreement to accept shorter spacing. We also conclude that NGSO FSS receivers must accept any interference from pre-existing MVDDS transmitting antennas.
- We adopt basic information sharing and coordination requirements that MVDDS and NGSO FSS operators must follow to facilitate mutual sharing of the 12 GHz band as co-primary services.
- We adopt MVDDS emission mask values for protecting NGSO FSS operations in the adjacent 11.7–12.2 GHz band and CARS and Broadcast Auxiliary Service (BAS) operations in the adjacent 12.7–13.25 GHz band from out-of-band MVDDS emissions.
- We adopt low elevation angle PFD radiation limits on NGSO FSS operations that will afford protection to MVDDS receivers from NGSO FSS interference for the portion of the non-geostationary orbital path near the horizon.
- We dismiss, without prejudice, all applications for terrestrial use of the 12 GHz band. All interested parties may reapply under the new licensing rules established in this proceeding.
- We adopt a geographic area licensing scheme that permits the filing of mutually exclusive applications. Consistent with our statutory mandate to resolve such applications through the use of auctions, any mutually exclusive initial applications for the MVDDS service will be resolved by competitive bidding.
- We find that the ORBIT Act does not bar the assignment of licenses for MVDDS in the 12.2–12.7 GHz band by competitive bidding.
- We adopt our proposal to auction MVDDS licenses in conformity with the general competitive bidding rules set forth in Part 1, Subpart Q, of the Commission's Rules.
- We adopt three small business definitions and three levels of bidding credits for MVDDS. We define a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years. Very small businesses will receive a bidding credit of 35 percent, small businesses will receive a bidding credit of 25 percent, and entrepreneurs will receive a bidding credit of 15 percent.
- We decline to adopt a set-aside of MVDDS spectrum or special bidding credits for DBS licensees.

• We decline to adopt a prohibition against transfers of MVDDS licenses.

• We adopt geographic license service areas for MVDDS on the basis of Component Economic Areas (CEAs).

• We adopt a channel plan consisting of one spectrum block of 500 megahertz per service area.

• We permit fixed one-way operations, but exclude mobile and aeronautical operations. Permissible operations include the flexibility for two-way services whereby the 12 GHz band could be used for the downstream path, and any upstream (or return) path could be located in other spectrum or over a wireline.

• We decline to adopt must-carry rules.

• We require incumbent non-public safety Private Operational Fixed Service (POFS) licensees in the 12 GHz band to protect MVDDS and NGSO FSS operations.

• We require MVDDS and NGSO FSS operations to protect incumbent traditional public safety POFS licensees in the 12 GHz band.

• We suspend the acceptance of POFS applications for new licenses, amendments to applications for new and modified licenses and major modifications to existing licenses.

• We decline to permit dominant cable operators from acquiring an attributable interest in an MVDDS license for a service area where significant overlap is present.

• We adopt a ten-year license term for MVDDS, beginning on the date of the initial authorization grant, and adopt a renewal expectancy based on the substantial service requirement.

• We restrict the placement of transmitting systems near the Canadian and Mexican borders.

**I. Final Regulatory Flexibility Certification (Second Report and Order)**

2. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2–12.7 GHz Band, *First Report and Order and Further Notice of Proposed Rule Making*, 66 FR 30361 (June 6, 2001) (*First Report and Order and Further Notice of Proposed Rule Making*), FCC 00–418, ET Docket No. 98–206, 16 FCC Rcd 4096 (2000). The Commission sought written public comment on the proposals in the *Further Notice of Proposed Rule Making* including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) examines the possible significant economic impact of our actions on small entities and conforms to the RFA.

*A. Need for, and Objectives of, the Second Report and Order*

3. By this action, Multichannel Video Distribution and Data Service (MVDDS) providers will share the 12.2–12.7 GHz band with new NGSO FSS operators on a co-primary basis and on a non-harmful interference basis with incumbent direct broadcast satellite (DBS) providers. The objective of this *Second Report and Order* is to adopt licensing, service and technical rules for the MVDDS. Specifically, we seek: (1) to accommodate the introduction of innovative services; and (2) to facilitate the sharing and efficient use of spectrum. Furthermore, the rules adopted in this *Second Report and Order* are designed to implement Congress's goal of giving small businesses the opportunity to participate in the provision of spectrum-based services in accordance with section 309(j) of the Communications Act of 1934, as amended. Thus, we believe that this service will facilitate the delivery of communications services, such as video and broadband services, to various populations including those that are deemed to be unserved and/or underserved.

*B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

4. Although we did not receive any comments in direct response to the IRFA, commenters suggested approaches that would foster participation in the MVDDS service by smaller entities. For instance, several commenters favored allowing MVDDS licensees to partition their geographic service areas into smaller areas. In addition, the Rural Telecommunications Group (RTG) suggested the use of smaller service areas—Metropolitan Statistical Areas (MSAs), Rural Service Areas (RSAs) or Component Economic Areas (CEAs)—to facilitate opportunities for small and rural carriers to obtain MVDDS licenses and to ensure that rural regions benefit from the 12.2–12.7 GHz band. Likewise, Pegasus supported licensing MVDDS on the basis of basic trading areas (BTAs) and major trading areas (MTAs) because the population served would be smaller and the cost of licenses likely lower, thus providing greater economic opportunity for a wider variety of applicants. Thus, the need to establish opportunities for smaller entities to have access to MVDDS spectrum was a sentiment expressed by various commenters in the MVDDS rule making proceeding.

*C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply*

5. The RFA directs agencies to provide a description of, and, where feasible an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

6. *Small Multichannel Video Programming Distributors (MVPDs).* SBA has developed a definition of small entities for cable, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators and DBS services. According to the Census Bureau data from 1992, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We address each service individually to provide a more precise estimate of small entities.

7. *Cable Services.* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. We last estimated that there were 1439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, using this definition, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and

rules adopted in this *Second Report and Order.*

8. The Communications Act defines a small cable system operator as ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, an operator serving fewer than 617,000 subscribers shall be deemed a small operator under the Communications Act definition, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

9. *DBS Service.* Because DBS provides subscription services, DBS falls within the SBA definition of Cable Networks (NAIC 513210) and Cable and Other Program Distribution (NAIC 513220). This definition provides that a small entity is expressed as one with $11 million or less in annual receipts. The operational licensees of DBS services in the United States are governed by Part 100 of the Commission's Rules. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees meeting this definition that could be impacted by these rules. DBS service requires a great investment of capital for operation, and we acknowledge that there are entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business by the SBA, if independently owned and operated.

10. *Auxiliary, Special Broadcast and other program distribution services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radio networks (NAICS 513111), radio stations (NAICS 513112), and television broadcasting (NAICS 513120). These definitions provide, respectively, that a small entity is one with either $5 million or less in annual receipts or $10.5 million in annual receipts. The numbers of these stations are very small. The Commission does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most of these types of services are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (as noted, either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the SBA's definition of a ''small business concern'' because they are not independently owned and operated.

11. *Private Operational Fixed Service.* Incumbent microwave services in the 12.2–12.7 GHz bands are private operational fixed (POF) services. Presently, there are approximately 22,015 common carrier licensees, and approximately 61,670 POF licensees and broadcast auxiliary radio licensees in the microwave service. Inasmuch as the Commission has not yet defined a small business with respect to these incumbent microwave services, we will utilize the SBA's definition applicable to cellular and other wireless telecommunications companies (NAICS 513322); *i.e.,* an entity with no more than 1500 persons. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

12. The rules set forth in this *Second Report and Order* will affect all entities that intend to provide terrestrial MVDDS operations in the 12.2–12.7 GHz band. In this *Second Report and Order,* we state that licensees are permitted to use MVDDS spectrum for, among other things, fixed one-way direct-to-home/business video and data services.

13. Additionally, in the *Second Report and Order,* we adopt definitions for three tiers of small businesses for the purpose of providing bidding credits to small entities. Specifically, we define the three tiers of small businesses as follows: an ''entrepreneur'' is an entity with average annual gross revenues not exceeding $40 million for the preceding three years; a ''small business'' is an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and a ''very small business'' is an entity with average annual gross revenues not exceeding $3 million for the preceding three years. We will not know how many auction participants or licensees will qualify under these definitions as entrepreneurs, small businesses, or very small businesses until an auction is held. However upon reviewing the record in the MVDDS proceeding, we assume that, for purposes of our evaluations and conclusions in the FRFA, a number of the prospective licensees will be entrepreneurs, small businesses, or very small businesses under our adopted definitions.

*D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

14. Applicants for MVDDS licenses are required to submit an FCC Form 175 short-form application prior to the auction, and auction winners will be required to file an FCC Form 601 license application. Additionally, we will apply the Part 101 rules governing reporting requirements to MVDDS systems. Specifically, each MVDDS licensee is required to file with the Commission two copies of a report no later than March 1 of each year for the preceding calendar year, which must include the following: (a) name and address of licensee; (b) station(s) call letters and primary geographic service area(s); and (c) the following statistical information for the licensee's station (and each channel thereof): (i) the total number of separate subscribers served during the calendar year; (ii) the total hours of transmission service rendered during the calendar year to all subscribers; (iii) the total hours of transmission service rendered during the calendar year involving the transmission of local broadcast signals; and (iv) a list of each period of time during the calendar year in which the station rendered no service as authorized, if the time period was a consecutive period longer than forty-eight hours. In addition, we require each MVDDS licensee to file actual data on cases of harmful interference to DBS operations and measures taken to alleviate such interference. We believe that the information compiled in this report will assist us in analyzing trends and competition in the marketplace.

*E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

15. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

16. We have taken significant steps to reduce burdens on small entities wherever possible. To provide opportunities for small entities to participate in any auction that is held, we provide bidding credits for entrepreneurs, small businesses, and very small businesses as defined in section C of this FRFA. The bidding credits adopted are 15 percent for entrepreneurs, 25 percent for small businesses, and 35 percent for very small businesses. Our decision to adopt CEAs as service areas for MVDDS and to permit the partitioning of these service areas is also intended to provide small entities an opportunity to acquire licenses. There are currently 348 CEAs and we believe that the use of these service areas will encourage smaller business entities to participate in the MVDDS auction. Participation in the MVDDS auction by smaller business entities would foster the buildout of services to local and/or rural areas which are traditionally deemed underserved or unserved. The regulatory burdens we have retained are necessary in order to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Final Rules*

17. None.

18. *Report to Congress.* The Commission will send a copy of the *Second Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Second Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

**II. Ordering Clauses**

19. *Authority.* Accordingly, it is ordered that pursuant to the authority contained in sections 4(i), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 308, 309(j), this *Memorandum Opinion and Order and Second Report and Order is adopted.*

20. *It is further ordered* that, parts 25 and 101 of the Commission's rules ARE AMENDED as specified in rule changes, effective August 26, 2002, except for §§ 25.139, 101.103, 101.1403, 101.1413, 101.1417 and 101.1440 which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r) and 309(j).

21. *It is further ordered* that pursuant to sections 4(i), 302, 303(e), 303(f), 303(g), 303(r) and 405 of the Communications Act of 1934, as amended, the petitions for reconsideration filed by SkyBridge, DirecTV, Inc., EchoStar Satellite Corporation, Satellite Broadcasting and Communications Association, the Boeing Company, and SkyTower, Inc. as they relate to our decision to allocate MVDDS in the 12 GHz band *are denied.*

22. *It is further ordered* that pursuant to sections 4(i), 302, 303(e), 303(f), 303(g), 303(r) and 405 of the Communications Act of 1934, as amended, the DBS Petition for Consolidation and Declaration filed by DirecTV and EchoStar *is dismissed.*

23. *It is further ordered* that pursuant to sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j), and section 1.934(d) of the Commission's Rules, 47 CFR 1.934(d), the Broadwave Network, LLC Applications for Licenses to Provide a New Terrestrial Transport Service in the 12 GHz band, Various DMAs, filed on January 8, 1999, *are dismissed.*

24. *It is further ordered* that pursuant to sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j), and section 1.934(d) of the Commission's Rules, 47 CFR 1.934(d), the PDC Broadband Corporation Applications for Licenses to Provide Terrestrial Service in the 12 GHz Band in All DMAs, filed on April 18, 2000, *are dismissed.*

25. *It is further ordered* that pursuant to sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j), and section 1.934(d) of the Commission's Rules, 47 CFR 1.934(d), the Satellite Receivers, Ltd. Applications for Licenses to Provide Terrestrial Television Broadcast and Data Services in the 12.2–12.7 GHz Band in Illinois, Indiana, Iowa, Michigan, Minnesota and Wisconsin, filed on August 25, 2000, *are dismissed.*

26. *It is further ordered* that, effective as of the date of the release of this *Memorandum Opinion and Order and Second Report and Order,* NO NEW APPLICATIONS WILL BE ACCEPTED FOR FILING in the 12.2–12.7 GHz band for private operational fixed service, except for applications for minor modifications or for license assignment or transfer of control.

27. *It is further ordered* that pending applications, as of the release date of this *Memorandum Opinion and Order and Second Report and Order,* for Private Operational Fixed Service licenses in the 12.2–12.7 GHz band *will be processed* on a first-come, first-served basis.

28. *It is further ordered* that the Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *Memorandum Opinion and Order and Second Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects**

*47 CFR Part 25*

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites, Securities, and Telecommunications.

*47 CFR Part 101*

Communications equipment, Radio, and Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications

Commission amends 47 CFR parts 25 and 101 as follows:

## PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

**Authority:** 47 U.S.C. 701–744. Interprets or applies sec. 303.47 U.S.C. sections 154, 301, 302, 303, 307, 309, and 332, unless otherwise noted.

2. Section 25.139 is added to read as follows:

### § 25.139 NGSO FSS coordination and information sharing between MVDDS licensees in the 12.2 GHz to 12.7 GHz band.

(a) NGSO FSS licensees shall maintain a subscriber database in a format that can be readily shared with MVDDS licensees for the purpose of determining compliance with the MVDDS transmitting antenna spacing requirement relating to qualifying existing NGSO FSS subscriber receivers set forth in § 101.129 of this chapter.

(b) Within ten business days of receiving notification of the location of a proposed MVDDS transmitting antenna, the NGSO FSS licensee shall provide sufficient information from the database to enable the MVDDS licensee to determine whether the proposed MVDDS transmitting site meets the minimum spacing requirement.

(c) If the location of the proposed MVDDS transmitting antenna site does not meet the separation requirements of § 101.129 of this chapter, then the NGSO FSS licensee shall also indicate to the MVDDS licensee within the same ten day period specified in paragraph (b) of this section whether the proposed MVDDS transmitting site is acceptable at the proposed location.

(d) Nothing in this section shall preclude NGSO FSS and MVDDS licensees from entering into an agreement to accept MVDDS transmitting antenna locations that are shorter-spaced from existing NGSO FSS subscriber receivers than the distance set forth in § 101.129 of this chapter.

3. Section 25.208 is amended by adding paragraph (n) to read as follows:

### § 25.208 Power flux density limits.

* * * * *

(n) In the band 12.2–12.7 GHz, for NGSO FSS space stations, the low-angle power flux-density at the Earth's surface produced by emissions from a space station for all conditions and for all methods of modulation shall not exceed the lower of the following values:

(1) 158 dB(W/m$^2$) in any 4 kHz band for angles of arrival between 0 and 2 degrees above the horizontal plane; and

(2) 158+ 3.33(δ-2) dB(W/m$^2$) in any 4 kHz band for angles of arrival (δ) (in degrees) between 2 and 5 degrees above the horizontal plane.

**Note to paragraph (n):** These limits relate to the power flux density, which would be obtained under assumed free-space propagation conditions.

* * * * *

## PART 101—FIXED MICROWAVE SERVICES

4. The authority citation for part 101 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

5. Section 101.3 is amended by adding a definition for MVDDS in alphabetical order to read as follows:

### § 101.3 Definitions.

* * * * *

*Multichannel Video Distribution and Data Service (MVDDS).* A fixed microwave service licensed in the 12.2–12.7 GHz band that provides various wireless services. Mobile and aeronautical operations are prohibited.

* * * * *

6. Section 101.101 is amended by revising the entry for 12,200–12,700 MHz in the table to read as follows:

### § 101.101 Frequency availability.

| Frequency band (MHz) | Radio service | | | | |
|---|---|---|---|---|---|
| | Common carrier (Part 101) | Private radio (Part 101) | Broadcast auxiliary (Part 74) | Other (Parts 15, 21, 24, 25, 74, 78 & 100) | Notes |
| * | * | * | * | * | * |
| 12,200–12,700 | MVDDS | MVDDS, POFS | | DBS, NGSO FSS. | |
| * | * | * | * | * | * |

* * * * *

7. Section 101.103 is amended by revising paragraph (f) to read as follows:

### § 101.103 Frequency coordination procedures.

* * * * *

(f) (1) *Coordination and information sharing between MVDDS and NGSO FSS licensees in the 12.2 GHz to 12.7 GHz band.* Prior to the construction or addition of an MVDDS transmitting antenna in this frequency band, the MVDDS licensee shall provide notice of intent to construct the proposed antenna site to NGSO FSS licensees operating in the 12.2–12.7 GHz frequency band and maintain an Internet web site of all existing transmitting sites and transmitting antennas that are scheduled for operation within one year including the ''in service'' dates. In addition to the location of a proposed new transmitting antenna, MVDDS licensees shall provide to the NGSO FSS licensees a technical description of the operating characteristics of the proposed transmission facility. At a minimum, the following information must be included in each notification:

(i) Name of MVDDS licensee;

(ii) Geographic location (including NAD83 coordinates) of proposed MVDDS transmitting antenna;

(iii) Maximum EIRP per 24 MHz;

(iv) Height above average terrain of the transmitting antenna;

(v) Type of antenna to be utilized;

(vi) Main beam azimuth and altitude orientation for the proposed transmitting antenna;

(vii) Theoretically modeled antenna radiation pattern;

(viii) Type(s) of emissions, and;

(ix) Description of the proposed service area.

(2) If the proposed MVDDS antenna site does not meet the minimum spacing requirements on the date of original notification or on subsequent annual anniversary dates of non-operation as set forth in § 101.129, then the MVDDS licensee shall not construct the proposed transmission facility unless all NGSO FSS licensees having active subscribers within the minimum separation distance agree to a shorter spacing. Nothing in this section shall preclude MVDDS and NGSO FSS licensees from agreeing to accept the siting of new MVDDS transmitting antennas that do no meet the minimum distance set forth in § 101.129. Incumbent point-to-point licensees'

(those not licensed as MVDDS) facilities are to be operated in the band 12,200–12,700 MHz following the procedures, technical standards, and requirements of § 101.105 in order to protect stations providing Direct Broadcast Satellite Service.

* * * * *

8. Section 101.105 is amended by adding paragraphs (a)(4) and (a)(5) to read as follows:

**§ 101.105 Interference protection criteria.**

(a) * * *

(4) 12.2–12.7 GHz band.

(i) To accommodate co-primary NGSO FSS earth stations in the 12.2–12.7 GHz band, the PFD of an MVDDS transmitting system must not exceed −135 dBW/m$^2$ in any 4 kHz band at a reference point at the surface of the earth at a distance of 3 kilometers from the MVDDS transmitting antenna.

(ii) To accommodate co-primary Direct Broadcast Satellite Service earth stations, an MVDDS transmitting system must not exceed the EPFD levels specified in the appropriate region below at any DBS subscriber location in accordance with the procedures listed in § 101.1440.

(A) 168.4 dBW/m$^2$/4kHz in the Eastern region consisting of the following states: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, and Florida.

(B) 169.8 dBW/m$^2$/4kHz in the Midwestern region consisting of the following states: Ohio, Michigan, Indiana, Wisconsin, Illinois, Minnesota, Iowa, Missouri, Arkansas, South Dakota, Nebraska, Kansas, Oklahoma, and Texas.

(C) 171.0 dBW/m$^2$/4kHz in the Southwestern region consisting of the following states: Wyoming, Colorado, New Mexico, Utah, Arizona, Nevada, and California (south of 37° North Latitude).

(D) 172.1 dBW/m$^2$/4kHz in the Northwestern region consisting of the following states: Washington, Oregon, California (north of 37° North Latitude), Idaho, Montana, North Dakota, Alaska, and Hawaii.

(iii) Except for public safety entities, harmful interference protection from MVDDS stations to incumbent point-to-point 12 GHz fixed stations is not required. Incumbent point-to-point private operational fixed 12 GHz stations, except for public safety entities, are required to protect MVDDS stations under the process described in § 101.103(d).

(5) All stations operating under this part must protect the radio quiet zones as required by § 1.924 of this chapter. Stations authorized by competitive bidding are cautioned that they must receive the appropriate approvals directly from the relevant quiet zone entity prior to operating.

* * * * *

9. Section 101.107 is amended by revising footnote 6 to the Table in paragraph (a) to read as follows:

**§ 101.107 Frequency tolerance.**

(a) * * *

[6] Applicable to private operations fixed point-to-point microwave stations and stations providing MVDDS service.

* * * * *

10. Section 101.109(c) is amended by revising the entry for 12,200–12,700 MHz and by adding footnote 8 in the Table to read as follows:

**§ 101.109 Bandwidth.**

* * * * *

(c) * * *

| Frequency band (MHz) | Maximum authorized bandwidth |
|---|---|
| * * * * * | |
| 12,200 to 12,700[8] ..... | 500 megahertz |
| * * * * * | |

[8] For incumbent private operational fixed point-to-point stations in this band (those not licensed as MVDDS), the maximum bandwidth shall be 20 MHz.

* * * * *

11. Section 101.111 is amended by revising the definition of ''B'' following the equation in paragraph (a)(2)(i) to read as follows:

**§ 101.111 Emission limitations.**

* * * * *

B = Authorized bandwidth in MHz. MVDDS operations in the 12.2–12.7 GHz band shall use 24 megahertz for the value of B in the emission mask equation set forth in this section.

* * * * *

12. Section 101.113 is amended by revising the entry for 12,200–12,700 MHz in the table and adding footnote 11 to the table in paragraph (a) to read as follows:

**§ 101.113 Transmitter power limitations.**

(a) * * *

| Frequency band (MHz) | Maximum allowable EIRP[1 2] | |
|---|---|---|
| | Fixed (dBW) | Mobile (dBW) |
| * * * | * * | * * |
| 12,200 to 12,700[11] ..... | +50. | |
| * * * | * * | * * |

[1] Per polarization.

[2] For multiple address operations, see § 101.147. Remote alarm units that are part of a multiple address central station projection system are authorized a maximum of 2 watts.

* * * * * *

[11] The EIRP for MVDDS stations is limited to 14.0 dBm per 24 MHz (−16.0 dBW per 24 MHz). Incumbent point-to-point stations may use up to +50 dBW except for low power systems which were licensed under § 101.147(q).

* * * * *

13. Section 101.115 is amended by revising footnote 9 to the table in paragraph (c) to read as follows:

**§ 101.115 Directional antennas.**

* * * * *

(c) * * *

[9] Except for Temporary-fixed operations in the band 13200–13250 MHz with output powers less than 250 mW and as provided in § 101.147(q), and except for antennas in the MVDDS service in the band 12.2–12.7 GHz.

* * * * *

14. Section 101.129 is amended by adding paragraph (b) to read as follows:

**§ 101.129 Transmitter location.**

* * * * *

(b) In the 12.2–12.7 GHz band, licensees must not locate MVDDS transmitting antennas within 10 km of

any qualifying NGSO FSS receiver unless mutual agreement is obtained between the MVDDS and NGSO FSS licensees. Such agreements must be retained by the licensees and made available for inspection by interested parties upon request.

(1) A qualifying NGSO FSS receiver, for the purposes of this section, is deemed to be one that is in regular use by an NGSO FSS subscriber for normal reception purposes in the 12.2–12.7 GHz band and not one for monitoring or testing purposes. In addition, qualifying receivers must either be in operation on the date or already be under construction and then operating within thirty days of the date that the MVDDS licensee notifies the NGSO FSS licensee of its intent to construct a new MVDDS transmitting antenna at a specified location.

(2) Except as provided in paragraph (b)(3) of this section, the 10 kilometer spacing requirement for each MVDDS transmitting antenna site shall not apply with respect to NGSO FSS receivers that might be installed or become operational (except for those under construction and operating within thirty days as specified in paragraph (b)(1) of this section) subsequent to the original date that the MVDDS licensee provided notice of its intention to construct a given transmission facility.

(3) In the event that a proposed MVDDS transmitting antenna for which notice has been duly given to the NGSO FSS licensees has not been placed in normal operation within one calendar year of the date of notice, then the MVDDS licensee loses the benefit of the original notice. Upon such anniversary, the MVDDS licensee must re-determine compliance with the minimum 10 kilometer spacing requirement based upon locations of qualifying NGSO FSS receivers on that anniversary date. A new determination of compliance with the spacing requirement shall be made for each succeeding anniversary of non-operation for each proposed MVDDS transmission site or additional antenna. This provision contemplates that failure to commence normal operation at a given MVDDS transmitting antenna site within one year of the date of NGSO FSS notification may require successive relocations of the proposed transmitter site in order to meet the minimum spacing distance as determined on each anniversary of non-operation.

15. Section 101.139 is amended by revising the last sentence of paragraph (a) to read as follows:

**§ 101.139 Authorization of transmitters.**

(a) * * * Transmitters designed for use in the 31.0–31.3 GHz band and transmitters designed for MVDDS use in the 12,200–12,700 MHz band will be authorized under the verification procedure.

* * * * *

16. Section 101.141 is amended by revising paragraph (a) introductory text to read as follows:

**§ 101.141 Microwave modulation.**

(a) Microwave transmitters employing digital modulation techniques and operating below 19.7 GHz (except for MVDDS stations in the 12,200–12,700 MHz band) must, with appropriate multiplex equipment, comply with the following additional requirements:

* * * * *

17. Amend § 101.147 as follows:

a. Revise the entry in paragraph (a) from ''12,200–12,700 MHz (22)'' to read ''12,200–12,700 MHz (31)''.

b. Add note (31) to the notes following the table in numerical order; and

c. Revise paragraphs (p) and (q) to read as follows:

**§ 101.147 Frequency assignments.**

(a) * * *

| | | | | | |
|---|---|---|---|---|---|
| 12,200–12,700 MHz (31) | | | | | |
| * | * | * | * | * | |

(31) This frequency band can be used for Multichannel Video Distribution and Data Service (MVDDS) shared with Direct Broadcast Satellite (DBS) Services on a co-primary non-harmful interference basis and on a co-primary basis with NGSO FSS satellite earth stations. Incumbent private operational fixed point-to-point licensees can also use these frequencies on a site by site basis.

* * * * *

(p) 12,000–12,700 MHz. The Commission has allocated the 12.2–12.7 GHz band for use by the Direct Broadcast Satellite Service (DBS), the Multichannel Video Distribution and Data Service (MVDDS), and the Non-Geostationary Satellite Orbit Fixed Satellite Service (NGSO FSS). MVDDS shall be licensed on a non-harmful interference co-primary basis to existing DBS operations and on a co-primary basis with NGSO FSS stations in this band. MVDDS use can be on a common carrier and/or non-common carrier basis and can use channels of any desired bandwidth up to the maximum of 500 MHz provided the EIRP does not exceed 14 dBm per 24 megahertz. Private operational fixed point-to-point microwave stations authorized after September 9, 1983, are licensed on a non-harmful interference basis to DBS and are required to make any and all adjustments necessary to prevent harmful interference to operating domestic DBS receivers. Incumbent public safety licensees shall be afforded protection from MVDDS and NGSO FSS licensees, however all other private operational fixed licensees shall be secondary to DBS, MVDDS and NGSO FSS licensees. As of May 23, 2002, the Commission no longer accepts applications for new licenses for point-to-point private operational fixed stations in this band, however, incumbent licensees and previously filed applicants may file applications for minor modifications and amendments (as defined in § 1.929 of this chapter) thereto, renewals, transfer of control, or assignment of license. Notwithstanding any other provisions, no private operational fixed point-to-point microwave stations are permitted to cause harmful interference to broadcasting-satellite stations of other countries operating in accordance with the Region 2 plan for the Broadcasting-Satellite Service established at the 1983 WARC.

(q) Special provisions for incumbent low power, limited coverage systems in the band segments 12.2–12.7 GHz.

(1) As of May 23, 2002, the Commission no longer accepts applications for new stations in this service and incumbent stations may remain in service provided they do not cause harmful interference to any other primary services licensed in this band as described in paragraph (p) of this section. However, incumbent licensees and previously filed applicants may file applications for minor modifications and amendments (as defined in § 1.929 of this chapter) thereto, renewals, transfer of control, or assignment of license.

(2) Prior to December 8, 2000, notwithstanding any contrary provisions in this part, the frequency pairs 12.220/12.460 GHz, 12.260/12.500 GHz, 12.300/12.540 GHz and 12.340/12.580 GHz, were authorized for low power, limited coverage systems subject to the following provisions:

(i) Maximum equivalent isotropically radiated power (EIRP) shall be 55 dBm;

(ii) The rated transmitter output power shall not exceed 0.5 watts;

(iii) Frequency tolerance shall be maintained to within 0.01 percent of the assigned frequency;

(iv) Maximum beamwidth shall not exceed 4 degrees. However, the sidelobe suppression criteria contained in § 101.115 shall not apply, except that a minimum front-to-back ratio of 38 dB shall apply;

(v) Upon showing of need, a maximum bandwidth of 12 MHz may be authorized per frequency assigned;

(vi) Radio systems authorized under the provisions of this section shall have

no more than three hops in tandem, except upon showing of need, but in any event the maximum tandem length shall not exceed 40 km (25 miles);

(vii) Interfering signals at the receiver antenna terminals of stations authorized under this section shall not exceed –90 dBm and –70 dBm respectively, for co-channel and adjacent channel interfering signals, and

(viii) Stations authorized under the provisions of this section shall provide the protection from interference specified in § 101.105 to stations operating in accordance with the provisions of this part.

18. Section 101.601 is amended by adding a sentence at the end of the paragraph to read as follows:

**§ 101.601 Eligibility.**

* * * This subpart shall not apply to stations offering MVDDS in the 12.2–12.7 GHz band.

19. Add subpart P to read as follows:

**Subpart P—Multichannel Video Distribution and Data Service Rules for the 12.2–12.7 GHz Band**

Sec.

101.1401 Service areas.
101.1403 Broadcast carriage requirements.
101.1405 Channeling plan.
101.1407 Permissible operations for MVDDS.
101.1409 Treatment of incumbent licensees.
101.1411 Regulatory status and eligibility.
101.1412 MVDDS eligibility restrictions for cable systems.
101.1413 License term and renewal expectancy.
101.1415 Partitioning and disaggregation.
101.1417 Annual report.
101.1421 Coordination of adjacent area MVDDS stations and incumbent public safety POFS stations.
101.1423 Canadian and Mexican coordination.
101.1425 RF safety.
101.1427 MVDDS licenses subject to competitive bidding.
101.1429 Designated entities.
101.1440 MVDDS protection of DBS.

**§ 101.1401 Service areas.**

Multichannel Video Distribution and Data Service (MVDDS) is licensed on the basis of Component Economic Areas (CEAs). CEAs are based on Economic Areas delineated by the United States Department of Commerce. Each CEA consists of a single economic node and the surrounding counties that are economically related to the node. The United States has a total of 348 CEAs, and each CEA shall be licensed by auction to one licensee.

**§ 101.1403 Broadcast carriage Requirements.**

MVDDS licensees are not required to provide all local television channels to subscribers within its area and thus are not required to comply with the must-carry rules, nor the local signal carriage requirements of the *Rural Local Broadcast Signal Act. See* Multichannel Video and Cable Television Service Rules, Subpart D (Carriage of Television Broadcast Signals), 47 CFR 76.51–76.70. If an MVDDS licensee meets the statutory definition of Multiple Video Programming Distributor (MVPD), the retransmission consent requirement of section 325(b)(1) of the Communications Act of 1934, as amended (47 U.S.C. 325(b)(1)) shall apply to that MVDDS licensee. Any MVDDS licensee that is an MVPD must obtain the prior express authority of a broadcast station before retransmitting that station's signal, subject to the exceptions contained in section 325(b)(2) of the Communications Act of 1934, as amended (47 U.S.C. 325(b)(2)). Network nonduplication, syndicated exclusivity, sports blackout, and leased access rules shall not be imposed on MVDDS licensees.

**§ 101.1405 Channeling plan.**

Each license shall have one spectrum block of 500 megahertz per geographic area that can be divided into any size channels. Disaggregation is not allowed.

**§ 101.1407 Permissible operations for MVDDS.**

MVDDS licensees must use spectrum in the 12.2–12.7 GHz band for any digital fixed non-broadcast service (broadcast services are intended for reception of the general public and not on a subscribership basis) including one-way direct-to-home/office wireless service. Mobile and aeronautical services are not authorized. Two-way services may be provided by using other spectrum or media for the return or upstream path.

**§ 101.1409 Treatment of incumbent licensees.**

Terrestrial private operational fixed point-to-point licensees in the 12.2–12.7 GHz band which were licensed prior to MVDDS or NGSO FSS satellite stations are incumbent point-to-point stations and are not entitled to protection from harmful interference caused by later MVDDS or NGSO FSS entrants in the 12.2–12.7 GHz band, except for public safety stations which must be protected. MVDDS and NGSO FSS operators have the responsibility of resolving any harmful interference problems that their operations may cause to these public safety incumbent point-to-point operations in the 12.2–12.7 GHz band. Incumbent public safety terrestrial point-to-point licensees may only make minor changes to their stations without losing this protection. This does not relieve current point-to-point licensees of their obligation to protect BSS operations in the subject frequency band. All point-to-point applications, including low-power operations, for new licenses, major amendments to pending applications, or major modifications to existing licenses for the 12.2–12.7 GHz band are no longer accepted except for renewals and changes in ownership. See § 1.929 of this chapter for definitions of major and minor changes.

**§ 101.1411 Regulatory status and eligibility.**

(a) MVDDS licensees are permitted to provide one-way video programming and data services on a non-common carrier and/or on a common carrier basis. MVDDS is not required to be treated as a common carrier service unless it is providing non-Internet voice and data services through the public switched network.

(b) MVDDS licensees in the 12.2–12.7 GHz band are subject to the requirements set forth in § 101.7.

(c) Any entity, other than one precluded by §§ 101.7 and 101.1412, is eligible for authorization to provide MVDDS under this part. Authorization will be granted upon proper application filing in accordance with the Commission's rules.

**§ 101.1412 MVDDS eligibility restrictions for cable operators.**

(a) Eligibility for MVDDS license. No cable operator, nor any entity owning an attributable interest in a cable operator, shall have an attributable interest in an MVDDS license whose geographic service area significantly overlaps such cable operator's service area, as defined in paragraph (d) of this section.

(b) Definition of cable operator. For the purposes of paragraph (a) of this section, the term ''cable operator'' means a company that is franchised to provide cable service.

(c) Waiver of restriction. Upon completion of the initial award of MVDDS licenses, a cable operator may petition for a waiver of the restriction on eligibility based upon a showing that the petitioner no longer has market power in its service area as the result of the entry of new competitors, other than an MVDDS licensee, into such service area.

(d) Significant overlap with service area. For purposes of paragraph (a) of this section, significant overlap occurs when cable operator's subscribers in a CEA make up thirty-five percent or more of the households in that CEA.

(e) Definition of attributable interest. For purposes of paragraph (a) of this

section, an entity shall be considered to have an attributable interest in a cable operator or MVDDS licensee pursuant to the following criteria:

(1) A controlling interest shall constitute an attributable interest. Controlling interest means majority voting equity ownership, any general partnership interest, or any means of actual working control (including negative control) over the operation of the entity, in whatever manner exercised.

(2) Any general partnership interest in a partnership;

(3) Partnership and similar ownership interests (including limited partnership interests) amounting to 20 percent or more of the total partnership interests, calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses;

(4) Any stock interest amounting to 20 percent or more of the outstanding voting stock of an entity;

(5) Any stock interest, (including non-voting stock) amounting to 20 percent or more of the total outstanding stock of an entity;

(6) Stock interests held in trust that exceed the limit set forth in paragraph (e) of this section shall constitute an attributable interest of any person who holds or shares the power to vote such stock, of any person who has the sole power to sell such stock, and, in the case of stock held in trust, of any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust shall constitute an attributable interest of such grantor or beneficiary, as appropriate.

(7) Debt and interests such as warrants and convertible debentures, options, or other interests (except non-voting stock) with rights of conversion to voting interests shall not constitute attributable interests unless and until conversion is effected.

(8) An interest in a Limited Liability Company (LLC) or Registered Limited Liability Partnership (RLLP) amounting to 20 percent or more, shall constitute an attributable interest of each such limited partner.

(9) Officers and directors of a cable operator, an MVDDS licensee, or an entity that controls such cable operator or MVDDS licensee, shall be considered to have an attributable interest in such cable operator or MVDDS licensee.

(10) Ownership interests that are held indirectly by any party through one or more intervening corporations or other entities shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that, if the ownership for any interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(11) Any person who manages the operations of a cable operator or an MVDDS licensee pursuant to a management agreement shall be considered to have an attributable interest in such cable operator or MVDDS licensee, if such person or its affiliate has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(i) The nature or types of services offered by such entity;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

(12) Any person or its affiliate who enters into a joint marketing arrangement with a cable operator, an MVDDS licensee, or an affiliate of such entity, shall be considered to have an attributable interest in such cable operator, MVDDS licensee, or affiliate, if such person or its affiliate has authority to make decisions or otherwise engage in practices or activities that determine:

(i) The nature or types of services offered by such entity;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

(f) Divestiture. Any cable operator, or any entity owning an attributable interest in a cable operator, that would otherwise be barred from acquiring an attributable interest in an MVDDS license by the eligibility restriction in paragraph (a) of this section, may be a party to an MVDDS application (i.e., have an attributable interest in the applicant), and such applicant will be eligible for an MVDDS license, pursuant to the divestiture procedures set forth in paragraphs (f)(1) through (f)(6) of this section.

(1) Divestiture shall be limited to the following prescribed means:

(i) An MVDDS applicant holding an attributable interest in a cable operator may divest such interest in the cable company.

(ii) Other MVDDS applicants disqualified under paragraph (a) of this section, will be permitted to:

(A) Partition and divest that portion of the existing service area that causes it to exceed the overlap restriction in paragraph (a) of this section, subject to applicable regulations of state and local governments; or

(B) Partition and divest that portion of the MVDDS geographic service area that exceeds the overlap restriction in paragraph (a) of this section.

(iii) Divestiture may be to an interim trustee if a buyer has not been secured in the required period of time, as long as the MVDDS applicant has no interest in or control of the trustee and the trustee may dispose of the license as it sees fit.

(2) The MVDDS applicant shall certify as an exhibit to its short form application that it and all parties to the application will come into compliance with paragraph (a) of this section.

(3) If such MVDDS applicant is a successful bidder in an auction, it must submit with its long-form application a signed statement describing its efforts to date and future plans to come into compliance with the eligibility restrictions in paragraph (a) of this section.

(4) If such an MVDDS applicant is otherwise qualified, its application will be granted subject to a condition that the applicant shall come into compliance with the eligibility restrictions in paragraph (a) of this section, within ninety (90) days of final grant of such MVDDS license.

(5) An MVDDS applicant will be considered to have come into compliance with paragraph (a) of this section if:

(i) In the case of the divestiture of a portion of an MVDDS license, it has successfully completed the assignment or transfer of control of the requisite portion of the MVDDS geographic service area.

(ii) In all other cases, it has submitted to the Commission a signed certification that it has come into compliance with paragraph (a) of this section by the following means, identified in such certification:

(A) By divestiture of a disqualifying interest in a cable operator, identified in terms of the interest owned, the owner of such interest (and, if such owner is not the applicant itself, the relationship of the owner to the applicant), the name of the party to whom such interest has been divested, and the date such divestiture was executed; or

(B) By divestiture of the requisite portion of the cable operator's existing service area, identified in terms of the name of the party to whom such interest has been divested, the date such divestiture was executed, the name of any regulatory agency that must approve such divestiture, and the date on which

an application was filed for this purpose with the regulatory agency.

(6) If no such certification or application is tendered to the Commission within ninety (90) days of final grant of the initial license, the Commission may cancel or rescind the license automatically, shall retain all monies paid to the Commission, and, based on the facts presented, shall take any other action it may deem appropriate.

**Note to paragraph (f):** Waivers of § 101.1014(e) may be granted upon an affirmative showing: that the interest holder has less than a fifty percent voting interest in the licensee and there is an unaffiliated single holder of a fifty percent or greater voting interest; that the interest holder is not likely to affect the local market in an anticompetitive manner; that the interest holder is not involved in the operations of the licensee and does not have the ability to influence the licensee on a regular basis; and that grant of a waiver is in the public interest because the benefits to the public of common ownership outweigh any potential anticompetitive harm to the market.

### § 101.1413 License term and renewal expectancy.

(a) The MVDDS license term is ten years, beginning on the date of the initial authorization grant.

(b) Application of a renewal expectancy is based on the substantial service requirement which is defined as a service that is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal. At the end of the license term, the Commission will consider factors such as:

(1) Whether the licensee's operations service niche markets or focus on serving populations outside of areas serviced by other MVDDS licensees;

(2) Whether the licensee's operations serve populations with limited access to telecommunications services; and

(3) A demonstration of service to a significant portion of the population or land area of the licensed area.

(c) The renewal application of an MVDDS licensee must include the following showings in order to claim a renewal expectancy:

(1) A coverage map depicting the served and unserved areas;

(2) A corresponding description of current service in terms of geographic coverage and population served or transmitter locations in the served areas; and

(3) Copies of any Commission Orders finding the licensee to have violated the Communications Act or any Commission rule or policy and a list of any pending proceedings that relate to any matter described by the requirements for the renewal expectancy.

### § 101.1415 Partitioning and Disaggregation.

(a) MVDDS licensees are permitted to partition licensed geographic areas along county borders (Parishes in Louisiana or Territories in Alaska). Disaggregation will not be permitted by MVDDS licensees in the 12.2–12.7 GHz band. ''Partitioning'' is the assignment of geographic portions of a license along geopolitical or other boundaries. ''Disaggregation'' is the assignment of discrete portions or ''blocks'' of spectrum licensed to a geographic licensee or qualifying entity.

(b) *Eligibility.* (1) Parties seeking approval for partitioning shall request from the Commission an authorization for partial assignment of a license pursuant to § 1.948 of this chapter.

(2) MVDDS licensees may apply to the Commission to partition their licensed geographic service areas to eligible entities and are free to partition their licensed spectrum at any time following the grant of a license.

(3) Any existing frequency coordination agreements shall convey with the assignment of the geographic area or spectrum, and shall remain in effect for the term of the agreement unless new agreements are reached.

(c) *Technical standards.* (1) Partitioning. In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to § 1.948 of this chapter and list the partitioned service area on a schedule to the application.

(2) The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83).

(d) *Unjust enrichment.* 12 GHz licensees that received a bidding credit and partition their licenses to entities not meeting the eligibility standards for such a bidding credit, will be subject to the provisions concerning unjust enrichment as set forth in § 1.2111 of this chapter.

(e) *License term.* The MVDDS license term is ten years, beginning on the date of the initial authorization grant. The license term for a partitioned license area shall be the remainder of the original licensee's license term as provided for in § 101.1413.

(f) *Construction requirements.* Applications requesting approval for partitioning must include a certification by each party stating that one or both parties will satisfy the construction requirement set forth in § 101.1413. Failure by a party to meet its respective construction requirement will result in the automatic cancellation of its license without further Commission action.

### § 101.1417 Annual report.

Each MVDDS licensee shall file with the Public Safety & Private Wireless Division of the Wireless Telecommunications Bureau of the Commission two copies of a report by March 1 of each year for the preceding calendar year. This report must include the following:

(a) Name and address of licensee;

(b) Station(s) call letters and primary geographic service area(s); and

(c) The following statistical information for the licensee's station (and each channel thereof):

(1) The total number of separate subscribers served during the calendar year;

(2) The total hours of transmission service rendered during the calendar year to all subscribers;

(3) The total hours of transmission service rendered during the calendar year involving the transmission of local broadcast signals; and

(4) A list of each period of time during the calendar year in which the station rendered no service as authorized, if the time period was a consecutive period longer than 48 hours, and

### § 101.1421 Coordination of adjacent area MVDDS stations and incumbent public safety POFS stations.

(a) MVDDS licensees in the 12.2–12.7 GHz band are required to develop sharing and protection agreements based on the design and architecture of their systems, in order to ensure that no harmful interference occurs between adjacent geographical area licensees. MVDDS licensees shall:

(1) Engineer systems to be reasonably compatible with adjacent and co-channel operations in the adjacent areas on all its frequencies; and

(2) Cooperate fully and in good faith to resolve interference and transmission problems that are present on adjacent and co-channel operations in adjacent areas.

(b) Harmful interference to public safety stations, co-channel MVDDS stations operating in adjacent geographic areas, and stations operating on adjacent channels to MVDDS stations is prohibited. In areas where the CEAs are in close proximity, careful consideration should be given to power requirements and to the location, height, and radiation pattern of the transmitting and receiving antennas. Licensees are expected to cooperate fully in attempting to resolve problems of potential interference before bringing

the matter to the attention of the Commission.

(c) Licensees shall coordinate their facilities whenever the facilities have optical line-of-sight into other licensees' areas or are within the same geographic area. Licensees are encouraged to develop operational agreements with relevant licensees in the adjacent geographic areas. Incumbent public safety POFS licensee(s) shall retain exclusive rights to its channel(s) within the relevant geographical areas and must be protected in accordance with the procedures in § 101.103. A list of public safety incumbents is attached as Appendix I to the Memorandum Opinion and Order and Second Report and Order, Docket 98–206 (released May 23, 2002). Please check with the Commission for any updates to that list.

**§ 101.1423 Canadian and Mexican coordination.**

Pursuant to § 2.301 of this chapter, MVDDS systems in the United States within 56 km (35 miles) of the Canadian and Mexican border will be granted conditional licenses, until final international agreements are approved. These systems may not cause harmful interference to stations in Canada or Mexico. MVDDS stations must comply with the procedures outlined under § 101.147(p) and § 1.928(f)(1) and (2) of this chapter until final international agreements concerning MVDDS are signed. Section 1.928(f) of this chapter states that transmitting antennas can be located as close as five miles (eight kilometers) of the border if they point within a sector of 160 degrees away from the border, and as close as thirty-five miles (fifty-six kilometers) of the border if they point within a sector of 200 degrees toward the border without coordination with Canada. MVDDS licensees shall apply this method near the Canadian and Mexican borders. No stations are allowed within 5 miles of the borders.

**§ 101.1425 RF safety.**

MVDDS stations in the 12.2–12.7 GHz frequency band do not operate with output powers that equal or exceed 1640 watts EIRP and therefore will not be subject to the routine environmental evaluation rules for radiation hazards, as set forth in § 1.1307 of this chapter.

**§ 101.1427 MVDDS licenses subject to competitive bidding.**

Mutually exclusive initial applications for MVDDS licenses in the 12.2–12.7 GHz band are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided.

**§ 101.1429 Designated entities.**

(a) *Eligibility for small business provisions.* (1) A very small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.

(2) A small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.

(3) An entrepreneur is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $40 million for the preceding three years.

(4) A consortium of very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section. A consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(2) of this section. A consortium of entrepreneurs is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(3) of this section.

(5) For purposes of determining whether an entity meets any of the definitions set forth in paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered in the manner set forth in §§ 1.2110(b) and (c) of this chapter.

(b) *Bidding credits.* A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as an entrepreneur or a consortium of entrepreneurs as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

**§ 101.1440 MVDDS protection of DBS.**

(a) An MVDDS licensee shall not begin operation unless it can ensure that the EPFD from its transmitting antenna at all DBS customers of record locations is below the values listed for the appropriate region in § 101.105(a)(4)(ii). Alternatively, MVDDS licensees may obtain a signed written agreement from DBS customers of record stating that they are aware of and agree to their DBS system receiving MVDDS signal levels in excess of the appropriate EFPD limits specified in § 101.105(a)(4)(ii). DBS customers of record are those who had their DBS receive antennas installed prior to or within the 30 day period after notification to the DBS operator by the MVDDS licensee of the proposed MVDDS transmitting antenna site.

(b) MVDDS licensees are required to conduct a survey of the area around its proposed transmitting antenna site to determine the location of all DBS customers of record that may potentially be affected by the introduction of its MVDDS service. The MVDDS licensee must assess whether the signal levels from its system, under its deployment plans, would exceed the appropriate EPFD levels in § 101.105(a)(4)(ii) at any DBS customer of record location. Using EPFD calculations, terrain and building structure characteristics, and the survey results, an MVDDS licensee must make a determination of whether its signal level(s) will exceed the EPFD limit at any DBS customer of record sites. To assist in making this determination, the MVDDS provider can use the EPFD contour model developed by the Commission and described in Appendix J of the *Memorandum Opinion and Order and Second Report and Order*, ET Docket 98–206 or on the OET website at *http://www.fcc.gov/oet/dockets/et98–206*.

(c) If the MVDDS licensee determines that its signal level will exceed the EPFD limit at any DBS customer site, it shall take whatever steps are necessary, up to and including finding a new transmit site, to ensure that the EPFD limit will not be exceeded at any DBS customer location.

(d) Coordination between MVDDS and DBS licensees. (1) At least 90 days prior to the planned date of MVDDS commencement of operations, the MVDDS licensee shall provide the following information to the DBS licensee(s):

(i) Geographic location (including NAD 83 coordinates) of its proposed station location;

(ii) Maximum EIRP of each transmitting antenna system;

(iii) Height above ground level for each transmitting antenna;

(iv) Antenna type along with main beam azimuth and altitude orientation information, and description of the antenna radiation pattern;

(v) Description of the proposed service area; and

(vi) Survey results along with a technical description of how it determined compliance with the appropriate EPFD level at all DBS subscriber locations.

(2) No later than forty-five days after receipt of the MVDDS system information in paragraph (d)(1) of this section, the DBS licensee(s) shall provide the MVDDS licensee with a list of any new DBS customer locations that have been installed in the 30-day period following the MVDDS notification. In addition, the DBS licensee(s) could indicate agreement with the MVDDS licensee's technical assessment, or identify DBS customer locations that the MVDDS licensee failed to consider or DBS customer locations where they believe the MVDDS licensee erred in its analysis and could exceed the prescribed EPFD limit.

(3) Prior to commencement of operation, the MVDDS licensee must take into account any new DBS customers or other relevant information provided by DBS licensees in response to the notification in paragraph (d)(1) of this section.

(e) Beginning thirty days after the DBS licensees are notified of a potential MVDDS site under paragraph (d)(1) of this section, the DBS licensees have the responsibility of ensuring that all future installed DBS receive antennas on its system are located in such a way as to avoid the MVDDS signal. These later installed receive antennas shall have no further rights of complaint against the notified MVDDS transmitting antenna(s).

(f) In the event of a major modification as defined in § 1.929 of this chapter, such as the addition of an antenna, to an MVDDS station, the procedures of paragraphs (d) and (e) of this section and rights of complaint begin anew. Exceptions to this are renewal, transfer of control, and assignment of license applications.

(g) *Interference complaints.* The MVDDS licensee must satisfy all complaints of interference to DBS customers of record which are received during a one year period after commencement of operation of the transmitting facility. Specifically, the MVDDS licensee must correct interference caused to a DBS customer of record or cease operation if it is demonstrated that the DBS customer is receiving harmful interference from the MVDDS system or that the MVDSS signal exceeds the permitted EPFD level at the DBS customer location.

[FR Doc. 02–15779 Filed 6–25–02; 8:45 am]

BILLING CODE 6712–01–P

# Proposed Rules

Federal Register
Vol. 67, No. 123
Wednesday, June 26, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 983

**[Docket No. AO–F&V–983–2; FV02–983–01]**

## Pistachios Grown in California; Hearing on Proposed Marketing Agreement and Order No. 983

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

**ACTION:** Notice of public hearing on proposed marketing agreement and order.

**SUMMARY:** Notice is hereby given of a public hearing to consider a proposed marketing agreement and order under the Agricultural Marketing Agreement Act of 1937 to cover pistachios grown in California. The proposal was submitted on behalf of the California pistachio industry by the Proponents Committee for a Federal Marketing Order for Pistachios. The proposed order would set standards for the quality of pistachios produced and handled in California by establishing a maximum aflatoxin tolerance level, maximum limits for defects, a minimum size requirement, and mandatory inspection and certification. The program would be financed by assessments on pistachio handlers and would be administered by a committee of growers and handlers nominated by the industry and appointed by the Department of Agriculture (USDA).

**DATES:** The hearing will be held in Fresno, California, from July 23 to July 25, 2002. The hearing session on Tuesday, July 23, will begin at 8:00 a.m. and end at 5:00 p.m. The hearing session on Wednesday, July 25, will begin at 8:00 a.m. and end at 4:00 p.m. If an additional hearing session is necessary, the hearing will continue at 8:00 a.m. on Thursday, July 25, 2002.

**ADDRESSES:** The hearing location is: The Fresno Metropolitan Flood Control District, Board of Directors' Chambers, 5469 East Olive Street, Fresno, California, 93727.

**FOR FURTHER INFORMATION CONTACT:** Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), USDA, Post Office Box 1035, Moab, UT 84532, telephone: (435) 259–7988, fax: (435) 259–4945; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938. Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

**SUPPLEMENTARY INFORMATION:** This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposal on small businesses.

The marketing agreement and order proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If issued, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

This proposal is the result of nearly three years of efforts undertaken by the Proponents Committee (committee), a committee representing producers and handlers of pistachios in California. The committee was established in 2000 as a result of renewed industry interest in a Federal marketing order. An earlier attempt to establish a Federal marketing order in 1996 on behalf of the pistachio industry by the California Pistachio Commission (Commission) and the Western Pistachio Association (Association) was terminated in 2000 due to lack of industry support for certain proposed provisions. The current proposal is different from that which was previously proposed since many controversial issues have either been removed or resolved through more exacting specification in the proposed regulations. The Proponents Committee is independent of the Commission and the Association.

The proponent group contends that the proposed marketing order program would ensure consistency in the quality of California pistachios, thereby increasing consumer demand and confidence in the product, and enhancing producer returns.

Presently, industry quality control practices are limited to voluntary testing for aflatoxin and other quality requirements under a California Pistachio Marketing Agreement (agreement) entered into by a number of pistachio handlers under authority of the California Department of Food and Agriculture. The agreement is limited to issues relating to the blending of artificially opened pistachios with those naturally opened, and the bleaching of pistachios. Aflatoxin testing and

sampling guidelines are only for exports to specified countries.

The proposal for an order has been widely discussed within the California pistachio industry for at least 10 years, including discussions related to the 1996 proposal. None of the recommendations or proposals discussed herein have received approval by the Secretary of Agriculture.

Testimony is invited at the hearing on the proposed marketing agreement and order (hereinafter referred to as the order) and all of its provisions, as well as any appropriate modifications or alternatives.

The public hearing is held for the purpose of:

(a) Receiving evidence about the economic and marketing conditions that relate to the proposed order and to appropriate modifications thereof;

(b) Determining whether the handling of pistachios produced in the production area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce and foreign commerce;

(c) Determining whether there is a need for a marketing agreement and order for pistachios;

(d) Determining the economic impact of the proposed order on the industry in the proposed production area and on the public affected by such program; and

(e) Determining whether the proposed order or any appropriate modification thereof would tend to effectuate the declared policy of the Act.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex-parte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Provisions of the proposed marketing agreement and order follow. Those sections identified with an asterisk (*) apply only to the proposed marketing agreement.

**List of Subjects in Proposed 7 CFR Part 983**

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

The marketing agreement and order proposed by the Proponents Committee for a Federal Marketing Order for Pistachios Grown in California would add a new part 983 to read as follows:

## PART 983—PISTACHIOS GROWN IN CALIFORNIA

## Subpart—Order Regulating Handling

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983.68 Effect of termination or amendment.
983.69 Non-commercial exemption.
983.70 Relationship with the California Pistachio Commission.
*983.90 Counterparts.
*983.91 Additional parties.
*983.92 Order with marketing agreement.

**Authority:** 7 U.S.C. 601–674

### Definitions

#### § 983.1 Accredited laboratory.

An *accredited laboratory* is a laboratory that has been approved or accredited by the U.S. Department of Agriculture for testing aflatoxin.

#### § 983.2 Act.

*Act* means Public Act No. 10, 73rd Congress (May 12, 1933), as amended and as re-enacted and amended by the Agricultural Marketing Order Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

#### § 983.3 Affiliation.

*Affiliation.* This term normally appears as ''affiliate of'', or ''affiliated with'', and means a person such as a producer or handler who is: a producer or handler that directly, or indirectly through one or more intermediaries, owns or controls, or is controlled by, or is under common control with the producer or handler specified; or a producer or handler that directly, or indirectly through one or more intermediaries, is connected in a proprietary capacity, or shares the ownership or control of the specified producer or handler with one or more other producers or handlers. As used in this part, the term ''control'' (including the terms ''controlling'', ''controlled by'', and ''under the common control with'') means the possession, direct or indirect, of the power to direct or cause

the direction of the management and policies of a handler or a producer, whether through voting securities, membership in a cooperative, by contract or otherwise.

**§ 983.4 Aflatoxin.**

*Aflatoxins* are a group of mycotoxins produced by the molds *Aspergillus flavus* and *Aspergillus parasiticus.* Aflatoxins are naturally occurring compounds produced by molds, which can be spread in improperly processed and stored nuts, dried fruits and grains.

**§ 983.5 Aflatoxin inspection certificate.**

*Aflatoxin inspection certificate* is a certificate issued by an accredited laboratory or by a USDA laboratory.

**§ 983.6 Assessed weight.**

*Assessed weight* means pounds of edible inshell pistachios received for processing by a handler within each production year with the weight computed at 5 percent moisture: *Provided,* That for loose kernels, the actual weight shall be multiplied by two to obtain an inshell weight; or based on such other elements as may be recommended by the committee and approved by the Secretary.

**§ 983.7 Certified pistachios.**

*Certified pistachios* are those for which aflatoxin inspection and minimum quality certificates have been issued.

**§ 983.8 Committee.**

*Committee* means the administrative committee for pistachios established pursuant to § 983.32.

**§ 983.9 Confidential data or information.**

*Confidential data or information* submitted to the committee consists of data or information constituting a trade secret or disclosure of the trade position, financial condition, or business operations of a particular entity or its customers.

**§ 983.10 Department or USDA.**

*Department or USDA* means the United States Department of Agriculture.

**§ 983.11 Districts.**

(a) *Districts* shall consist of the following:

(1) *District 1* consists of Tulare, Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego, and Imperial Counties of California.

(2) *District 2* consists of Kings, Fresno, Madera, and Merced Counties of California.

(3) *District 3* consists of all counties in California where pistachios are produced that are not included in Districts 1 and 2.

(b) With the approval of the Secretary, the boundaries of any district may be changed by a two-thirds vote of the committee, to ensure proper representation. The boundaries need not coincide with county lines. In addition, the boundaries in the production area may be adjusted to conform to changes to the boundaries of the districts established for those of the California Pistachio Commission upon the recommendation of the committee and approval of the Secretary.

**§ 983.12 Domestic shipments.**

*Domestic shipments* means shipments to the fifty states of the United States or to territories of the United States.

**§ 983.13 Edible pistachios.**

*Edible pistachios* are those which do not exceed the level of defects under § 983.38 and § 983.39.

**§ 983.14 Handle.**

*Handle* means to engage in:

(a) Receiving pistachios;

(b) Hulling and drying pistachios; and/or

(c) Further preparing pistachios by sorting, sizing, shelling, roasting, cleaning, salting, and/or packaging for marketing in or transporting to any and all markets in the current of interstate or foreign commerce: *Provided,* however, That transportation within the production area between handlers and from the orchard to the processing facility is not handling.

**§ 983.15 Handler.**

*Handler* means any person who handles pistachios.

**§ 983.16 Inshell pistachios.**

*Inshell pistachios* means pistachios that have a shell that has not been removed.

**§ 983.17 Inspector.**

*Inspector* means any inspector authorized by the USDA to inspect pistachios.

**§ 983.18 Lot.**

*Lot* means any quantity of pistachios that is submitted for testing purposes under this part.

**§ 983.19 Minimum quality requirements.**

*Minimum quality requirements* are permissible maximum defects and minimum size levels for inshell pistachios and kernels specified in § 983.39.

**§ 983.20 Minimum quality certificate.**

*Minimum quality certificate* is a certificate issued by the USDA or Federal/State Inspection Service.

**§ 983.21 Part and subpart.**

*Part* means the order regulating the handling of pistachios grown in the State of California, and all rules, regulations and supplementary orders issued thereunder. The aforesaid order regulating the handling of pistachios grown in California shall be a subpart of such part.

**§ 983.22 Person.**

*Person* means an individual, partnership, limited liability corporation, corporation, trust, association, or any other business unit.

**§ 983.23 Pistachios.**

*Pistachios* means the nuts of the pistachio tree of the genus *Pistacia vera* grown in the production area whether inshell or shelled.

**§ 983.24 Processing.**

*Processing* means hulling and drying pistachios in preparation for market.

**§ 983.25 Producer.**

*Producer* means any person engaged within the production area in a proprietary capacity in the production of pistachios for sale.

**§ 983.26 Production area.**

*Production area* means the State of California.

**§ 983.27 Production year.**

*Production year* is synonymous with ''fiscal period'' and means the period beginning on September 1 and ending on August 31 of each year or such other period as may be recommended by the committee and approved by the Secretary.

**§ 983.28 Proprietary capacity.**

*Proprietary capacity* means the capacity or interest of a producer or handler that, either directly or through one or more intermediaries, is a property owner together with all the appurtenant rights of an owner including the right to vote the interest in that capacity as an individual, a shareholder, member of a cooperative, partner, trustee or in any other capacity with respect to any other business unit.

**§ 983.29 Secretary.**

*Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in his/her stead.

**§ 983.30 Shelled pistachios.**

*Shelled pistachios* means pistachio kernels, or portions of kernels, after the pistachio shells have been removed.

**§ 983.31 Substandard pistachios.**

*Substandard pistachios* means pistachios, inshell or shelled, which do not comply with the maximum aflatoxin and/or minimum quality regulations of this part.

**Administrative Committee**

**§ 983.32 Establishment and membership.**

There is hereby established an administrative committee for pistachios to administer the terms and provisions of this part. This committee, consisting of eleven (11) member positions, each of whom shall have an alternate, shall be allocated as follows:

(a) *Handlers.* Two of the members shall represent handlers, as follows:

(1) One handler member nominated by one vote for each handler; and

(2) One handler member nominated by voting based on each handler casting one vote for each ton of the assessed weight of pistachios processed by such handler during the two production years preceding the production year in which the nominations are made.

(b) *Producers.* Eight members shall represent producers. Producers within the respective districts shall nominate four producers from District 1, three producers from District 2 and one producer from District 3.

(c) *Public member.* One member shall be a public member who is neither a producer nor a handler and shall have all the powers, rights and privileges of any other member of the committee. The public member and alternate public member shall be nominated by the committee and selected by the Secretary.

**§ 983.33 Initial members and nomination of successor members.**

Nomination of committee members and alternates shall follow the procedure set forth in this section or as may be changed as recommended by the committee and approved by the Secretary.

(a) *Initial members.* Nominations for initial members shall be conducted by the Secretary by either holding meetings of handlers and producers, or by mail.

(b) *Successor producer members.* Subsequent to the first nomination of committee members under this part, persons to be nominated to serve on the committee as producer members shall be selected pursuant to nomination procedures that shall be established by the committee with the approval of the Secretary: *Provided,* That any qualified individuals who seek nomination shall submit to the committee an intent to seek office in one designated district on such form and with such information as the committee shall designate; ballots, accompanied by the names of all such candidates, with spaces to indicate voters' choices and spaces for write-in candidates, together with voting instructions, shall be mailed to all producers who are on record with the committee within the respective districts; the person receiving the highest number of votes shall be the member nominee for that district, and the person receiving the second highest number of votes shall be the alternate member nominee. In case of a tie vote, the nominee shall be selected by a drawing.

(c) *Handlers.* Only handlers, including duly authorized officers or employees of handlers, may participate in the nomination of the two handler member nominees and their alternates. Nomination of the two handler members and their alternates shall be as follows:

(1) For one handler member nomination, each handler entity shall be entitled to one vote;

(2) For the second handler member nomination, each handler entity shall be entitled to cast one vote respectively for each ton of assessed weight of pistachios processed by that handler during the two production years preceding the production year in which the nominations are made. For the purposes of nominating handler members and alternates by volume, the assessed weight of pistachios shall be credited to the handler responsible under the order for the payment of assessments of those pistachios. The committee with the approval of the Secretary, may revise the handler representation on the committee if the committee ceases to be representative of the industry.

(d) *Producers.* Only producers, including duly authorized officers or employees of producers, may participate in the nomination of nominees for producer members and their alternates. Each producer shall be entitled to cast only one vote, whether directly or through an authorized officer or employee, for each position to be filled in the district in which the producer produces pistachios. If a producer is engaged in producing pistachios in more than one district, such producer shall select the district in which to participate in the nomination. If a person is both a producer and a handler of pistachios, such person may participate in both producer and handler nominations, provided, however, that a single member may not hold concurrent seats as both a producer and handler.

(e) *Member's affiliation.* Not more than two members and not more than two alternate members shall be persons employed by or affiliated with producers or handlers that are affiliated with the same handler and/or producer. Additionally, only one member and one alternate in any one district representing producers and only one member and one alternate representing handlers shall be employed by, or affiliated with the same handler and/or producer. No handler, and all of its affiliated handlers, can be represented by more than one handler member.

(f) *Cooperative affiliation.* In the case of a producer cooperative, a producer shall not be deemed to be connected in a proprietary capacity with the cooperative notwithstanding any outstanding retains, contributions or financial indebtedness owed by the cooperative to a producer if the producer has not marketed pistachios through the cooperative during the current and one preceding production year. A cooperative that has as its members one or more other cooperatives that are handlers shall not be considered as a handler for the purpose of nominating or voting under this part.

(g) *Alternate members.* Each member of the committee shall have an alternate member to be nominated in the same manner as the member. Any alternate serving in the same district as a member where both are employed by, or connected in a proprietary capacity with the same corporation, firm, partnership, association, or business organization, shall serve as the alternate to that member. An alternate member, in the absence of the member for whom that alternate is selected shall serve in place of that member on the committee, and shall have and be able to exercise all the rights, privileges, and powers of the member when serving on the committee. In the event of death, removal, resignation, or the disqualification of a member, the alternate shall act as a member on the committee until a successor member is selected and has been qualified.

(h) *Selection by Secretary.* Nominations under paragraph (g) of this section received by the committee for all handler and producer members and alternate member positions shall be certified and sent to the Secretary at least 60 days prior to the beginning of each two-year term of office, together with all necessary data and other information deemed by the committee to be pertinent or requested by the Secretary. From those nominations, the Secretary shall select the ten members

of the committee and an alternate for each member.

(i) *Acceptance.* Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary that if selected, such person agrees to serve in the position for which that nomination has been made.

(j) *Failure to nominate.* If nominations are not made within the time and manner specified in this part, the Secretary may, without regard to nominations, select the committee members and alternates qualified to serve on the basis of the representation provided for in § 983.32.

(k) *Term of office.* Selected producer members and producer alternate members of the committee shall serve for terms of two years: *Provided* that four of the initially selected producer members and one handler member and their alternates shall, by a drawing, be seated for terms of one year so that approximately half of the memberships' terms expire each year. Each member and alternate member shall continue to serve until a successor is selected and has qualified. The term of office shall begin on July 1st of each year. Committee members and alternates may serve up to four consecutive, two-year terms of office. In no event shall any member or alternate serve more than eight consecutive years on the Commission. For purposes of determining when a member or alternate has served four consecutive terms, the accrual of terms shall begin following any period of at least twelve consecutive months out of office.

(l) *Qualifications.* (1) Each producer member and alternate shall be, at the time of selection and during the term of office, a producer or an officer, or employee, of a producer in the district for which nominated.

(2) Each handler member and alternate shall be, at the time of selection and during the term of office, a handler or an officer, employee, or agent of a handler.

(3) Any member or alternate member who at the time of selection was employed by or an agent of a person or affiliated with the person who is nominated, that member shall, upon termination of that relationship, become disqualified to serve further as a member and that position shall be deemed vacant.

(4) No person nominated to serve as a public member or alternate public member shall have a financial interest in any pistachio growing or handling operation.

(5) The committee, with the approval of the Secretary, may issue rules and regulations covering the qualifications for members or alternate members.

(m) *Vacancy.* Any vacancy on the committee occurring by the failure of any person selected to the committee as a member or alternate member due to a change in status making the member ineligible to serve, or due to death, removal, or resignation, shall be filled, by a majority vote of the committee for the unexpired portion of the term. However, that person shall fulfill all the qualifications set forth in this part as required for the member whose office that person is to fill. The qualifications of any person to fill a vacancy on the committee shall be certified in writing to the Secretary. The Secretary shall notify the committee if the Secretary determines that any such person is not qualified.

### § 983.34 Procedure.

(a) *Quorum.* A quorum of the committee shall be any seven voting committee members. The vote of a majority of members present at a meeting at which there is quorum shall constitute the act of the committee: *Provided,* That actions of the committee with respect to the following issues shall require at least seven concurring votes of the voting members regarding any recommendation to the Secretary for adoption or change in:

(1) Minimum quality levels;

(2) Aflatoxin levels;

(3) Inspection programs;

(4) The establishment of the committee.

(b) *Voting.* Members of the committee may participate in a meeting by attendance in person or through the use of a conference telephone or similar communication equipment, as long as all members participating in such a meeting can communicate with one another. An action required or permitted to be taken by the committee may be taken without a meeting, if all members of the committee shall consent in writing to that action.

(c) *Compensation.* The members of the committee and their alternates shall serve without compensation, but members and alternates acting as members shall be allowed their necessary expenses: *Provided,* That the committee may request the attendance of one or more alternates not acting as members at any meeting of the committee, and such alternates may be allowed their necessary expenses; and, *Provided further,* That the public member and the alternate for the public member may be paid reasonable compensation in addition to necessary expenses.

### § 983.35 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make and adopt bylaws, rules and regulations to effectuate the terms and provisions of this part with the approval of the Secretary;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

### § 983.36 Duties.

The committee shall have, among others, the following duties:

(a) To adopt bylaws and rules for the conduct of its meetings and the selection of such officers from among its membership, including a chairperson and vice-chairperson, as may be necessary, and define the duties of such officers; and adopt such other bylaws, regulations and rules as may be necessary to accomplish the purposes of the Act and the efficient administration of this part;

(b) To employ or contract with such persons or agents as the committee deems necessary and to determine the duties and compensation of such persons or agents;

(c) To select such subcommittees as may be necessary;

(d) To submit to the Secretary a budget for each fiscal period, prior to the beginning of such period, including a report explaining the items appearing therein and a recommendation as to the rates of assessments for such period;

(e) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(f) To prepare periodic statements of the financial operations of the committee and to make copies of each statement available to producers and handlers for examination at the office of the committee;

(g) To cause its financial statements to be audited by a certified public accountant at least once each fiscal year and at such times as the Secretary may request. Such audit shall include an examination of the receipt of assessments and the disbursement of all funds. The committee shall provide the Secretary with a copy of all audits and shall make copies of such audits, after the removal of any confidential individual or handler information that may be contained in them, available for

examination at the offices of the committee;

(h) To act as intermediary between the Secretary and any producer or handler with respect to the operations of this part;

(i) To investigate and assemble data on the growing, handling, shipping and marketing conditions with respect to pistachios;

(j) To apprize the Secretary of all committee meetings in a timely manner;

(k) To submit to the Secretary such available information as the Secretary may request;

(l) To investigate compliance with the provisions of this part;

(m) To provide, through communication to producers and handlers, information regarding the activities of the committee and to respond to industry inquiries about committee activities;

(n) To oversee the collection of assessments levied under this part;

(o) To borrow such funds, subject to the approval of the Secretary and not to exceed the expected expenses of one fiscal year, as are necessary for administering its responsibilities and obligations under this part.

**Marketing Policy**

**§ 983.37 Marketing policy.**

Prior to August 1st each year, the committee shall prepare and submit to the Secretary a report setting forth its recommended marketing policy covering quality regulations for the pending crop. In the event it becomes advisable to modify such policy, because of changed crop conditions, the committee shall formulate a new policy and shall submit a report thereon to the Secretary. In developing the marketing policy, the committee shall give consideration to the production, harvesting, processing and storage conditions of that crop. The committee may also give consideration to current prices being received and the probable general level of prices to be received for pistachios by producers and handlers. Notice of the committee's marketing policy, and of any modifications thereof, shall be given promptly by reasonable publicity, to producers and handlers.

**Regulations**

**§ 983.38 Aflatoxin levels.**

(a) *Maximum level.* No handler shall ship for domestic human consumption, pistachios that exceed an aflatoxin level of more than 15.0 ppb. All shipments must also be covered by an aflatoxin inspection certificate. Pistachios that fail to meet the aflatoxin requirements shall be disposed in such manner as described in Failed lots/rework procedure of this part.

(b) *Change in level.* The committee may recommend to the Secretary changes in the aflatoxin level specified in this section. If the Secretary finds on the basis of such recommendation or other information that such an adjustment of the aflatoxin level would tend to effectuate the declared policy of the Act, such change shall be made accordingly.

(c) *Transfers between handlers.* Transfers between handlers within the production area are exempt from the aflatoxin regulation of this section.

(d) *Aflatoxin testing procedures.* To obtain an aflatoxin inspection certificate, each lot to be certified shall be uniquely identified, be traceable from testing through shipment by the handler and be subjected to the following:

(1) *Samples for testing.* Prior to testing, a sample shall be drawn from each lot and divided between those pistachios for aflatoxin testing and those for minimum quality testing (''lot samples'') in sufficient weight to comply with Table 1, Table 2 and Table 4 of this part.

(2) *Test samples for aflatoxin.* Prior to submission of samples to an accredited laboratory for aflatoxin analysis, three samples shall be created equally from the pistachios designated for aflatoxin testing in compliance with the requirements of the following Tables 1 and 2 (''test samples''). The test samples shall be prepared by, or under the supervision of, an inspector, or as approved under an alternative USDA-recognized inspection program. The test samples shall be designated by an inspector as Test Sample #1, Test Sample #2, and Test Sample #3. Each sample shall be placed in a suitable container, with the lot number clearly identified, and then submitted to an accredited laboratory. The gross weight of the inshell lot sample for aflatoxin testing and the number of samplings required are shown in the following Table 1. The gross weight of the kernel lot sample for aflatoxin testing and the number of incremental samples required is shown in the following Table 2.

TABLE 1.—INSHELL PISTACHIO LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

| Lot weight (lbs.) | Number of incremental samples for the lot sample | Total weight of lot sample (kilograms) | Weight of test sample (kilograms) |
|---|---|---|---|
| 220 or less | 10 | 3.0 | 1.0 |
| 221–440 | 15 | 4.5 | 1.5 |
| 441–1100 | 20 | 6.0 | 2.0 |
| 1101–2200 | 30 | 9.0 | 3.0 |
| 2201–4400 | 40 | 12.0 | 4.0 |
| 4401–11,000 | 60 | 18.0 | 6.0 |
| 11,001–22,000 | 80 | 24.0 | 8.0 |
| 22,001–150,000 | 100 | 30.0 | 10.0 |

TABLE 2.—SHELLED PISTACHIO KERNEL LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

| Lot weight (lbs.) | Number of incremental samples for the lot sample | Total weight of lot sample (kilograms) | Weight of test sample (kilograms) |
|---|---|---|---|
| 220 or less | 10 | 1.5 | .5 |
| 221–440 | 15 | 2.3 | .75 |
| 441–1100 | 20 | 3.0 | 1.0 |
| 1101–2200 | 30 | 4.5 | 1.5 |
| 2201–4400 | 40 | 6.0 | 2.0 |
| 4401–11,000 | 60 | 9.0 | 3.0 |
| 11,001–22,000 | 80 | 12.0 | 4.0 |

TABLE 2.—SHELLED PISTACHIO KERNEL LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION—Continued

| Lot weight (lbs.) | Number of incremental samples for the lot sample | Total weight of lot sample (kilograms) | Weight of test sample (kilograms) |
|---|---|---|---|
| 22,001–150,000 | 100 | 15.0 | 5.0 |

(3) *Testing of pistachios.* Test samples shall be received and logged by an accredited laboratory and each test sample shall be analyzed and prepared as described in the applicable provisions of the official methods of analysis of the Association of Analytical Communities (AOAC). A portion of the ground composite shall be analyzed chemically for total aflatoxin using High Pressure Liquid Chromatograph (HPLC), Vicam method (Aflatest) or other methods as described in the applicable provisions of Official Methods of Analysis of the AOAC. The aflatoxin level shall be calculated on a kernel weight basis. For inshell tests where shell and kernels are ground together, it shall be assumed the shell accounts for 50% of the lot weight so aflatoxin results shall be doubled.

(4) *Certification of lots ''negative'' as to aflatoxin.* Lots shall be certified as ''negative'' on the aflatoxin inspection certificate, if Test Sample #1 has an aflatoxin level at or below 5.0 ppb. If the aflatoxin level of Test Sample #1 is above 5.0 ppb, the accredited laboratory shall analyze Test Sample #2 and results of Test Samples 1 and 2 shall be averaged. A lot will be certified as negative as to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged results are at or below 10.0 ppb. If the averaged results are above 10.0 ppb, Test Sample #3 shall be analyzed and all three test sample results shall be averaged. If all three results average 15.0 ppb or less the lot will be certified as negative as to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate. If any sample analyzed results in an aflatoxin level over 15.0 ppb, the lot shall fail regardless of which test sample number it may be. If the lot fails, the accredited laboratory shall fill out a failed lot notification report as specified in § 983.40. The accredited laboratory shall send a copy of this report to the committee and to the failed lot's owner within 10 working days of failure. The aflatoxin inspection certificate shall certify each lot using a certification form identifying each lot by weight and date. This certification expires for the lot or remainder of the lot after 12 months.

(5) *Certification of aflatoxin levels.* Each accredited laboratory shall complete aflatoxin testing and reporting and shall certify that every lot of California pistachios shipped domestically does not exceed the aflatoxin levels as required in § 983.38(d)(4). Each handler shall keep a record of each test, along with a record of final shipping disposition. These records must be maintained for three years, and are subject to audit by the Secretary or the committee at any time.

(6) *Test samples that are not used for analysis.* If a handler does not elect to use Test Samples #2 or #3 for certification purposes the handler may request the laboratory to return them to the handler.

**§ 983.39 Minimum quality levels.**

(a) *Maximum defect and minimum size.* No handler shall ship for domestic human consumption, pistachios that exceed permissible maximum defect and minimum size levels shown in the following Table 3:

TABLE 3.—MAXIMUM DEFECT AND MINIMUM SIZE LEVELS

| Factor | Maximum permissible defects (percent by weight) | |
|---|---|---|
| | Inshell | Kernels |
| **EXTERNAL (SHELL) DEFECTS** | | |
| a. Non-splits & not split on suture | 10.0 | ..... |
| (1) Maximum non-splits allowed | 4.0 | ..... |
| b. Adhering hull material | 2.0 | ..... |
| c. Dark stain | 3.0 | ..... |
| d. Damage by other means, other than a, b and c above, which materially detracts from the appearance or the edible or marketing quality of the individual shell or the lot. | 10.0 | ..... |
| **INTERNAL (KERNEL) DEFECTS** | | |
| a. Damage | 6.0 | 3.0 |
| Immature kernel (Fills <75%—>50% of the shell) | | |
| Kernel spotting (Affects 1/8 aggregate surface) | | |
| b. Serious damage | 4.0 | 2.5 |
| Minor insect or vertebrate injury/insect damage, insect evidence, mold, rancidity, decay | | |
| (1) Maximum insect damage allowed | 2.0 | 0.5 |
| Total external or internal defects allowed | 9.0 | ..... |
| **OTHER DEFECTS** | | |
| a. Shell pieces and blanks (Fills <50% of the shell) | 2.0 | ..... |
| (1) Maximum blanks allowed | 1.0 | ..... |
| b. Foreign material | 0.25 | 0.1 |
| No glass, metal or live insects permitted | | |

TABLE 3.—MAXIMUM DEFECT AND MINIMUM SIZE LEVELS—Continued

| Factor | Maximum permissible defects (percent by weight) | |
|---|---|---|
| | Inshell | Kernels |
| c. Particles and dust | 0.25 | ..... |
| d. Loose kernels | 6.0 | ..... |
| | Minimum permissible size (percent by weight) | |
| a. Maximum allowable inshell pistachios that will pass through a 30/64ths inch round hole screen | 5.0 | ..... |

(b) *Definitions applicable to permissible maximum defect and minimum size levels:* The following definitions shall apply to inshell pistachio and pistachio kernel maximum defect and minimum size:

(1) ''*Loose kernels*'' means edible kernels or kernel portions that are out of the shell and which cannot be considered particles and dust.

(2) ''*External (shell) defects*'' means any abnormal condition affecting the hard covering around the kernel. Such defects include, but are not limited to, non-split shells, shells not split on suture, adhering hull material or dark stains.

(3) *Damage by external (shell) defects* shall also include any specific defect described in paragraphs (b)(3)(i) through (iv) of this section or an equally objectionable variation of any one of these defects, any other defect or any combination of defects which materially detracts from the appearance or the edibility or the marketing quality of the individual shell or the lot.

(i) *Non-split shells* means shells are not opened or are partially opened and will not allow an $^{18}/_{1000}$ (.018) inch thick by ¼ (.25) inch wide gauge to slip into the opening.

(ii) *Not split on suture* means shells are split other than on the suture and will allow an $^{18}/_{1000}$ (.018) inch thick by ¼ (.25) inch wide gauge to slip into the opening.

(iii) *Adhering hull material* means an aggregate amount of hull covers more than one-eighth (⅛) of the total shell surface, or when readily noticeable on dyed shells.

(iv) *Dark stain* on raw or roasted nuts means an aggregate amount of dark brown, dark gray or black discoloration affects more than one-eighth of the total shell surface or, on dyed nuts, when readily noticeable. Speckled discoloration on the stem end, bottom quarter of the nut is not considered damage.

(4) *Internal (kernel) defects* means any damage affecting the kernel. Such damage includes, but is not limited to evidence of insects, immature kernels, rancid kernels, mold or decay.

(i) *Damage by internal (kernel) defects* shall also include any specific defect described in paragraphs (b)(4)(i)(A) and (B) of this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edibility or the marketing quality of the individual kernel or of the lot.

(A) *Immature kernels* in inshell are excessively thin kernels, or when a kernel fills less than three-fourths, but not less than one-half of the shell cavity. ''Immature kernels'' in shelled pistachios are excessively thin kernels and can have black, brown or gray surface with a dark interior color and the immaturity has adversely affected the flavor of the kernel.

(B) *Kernel spotting* refers to dark brown or dark gray spots aggregating more than one-eighth of the surface of the kernel.

(ii) *Serious damage* by internal (kernel) defects means any specific defect described in paragraphs (b)(4)(ii)(A) through (E) of this section, or an equally objectionable variation of any one of these defects, which seriously detracts from the appearance or the edibility or the marketing quality of the individual kernel or of the lot.

(A) *Minor insect or vertebrate injury* means the kernel shows conspicuous evidence of feeding.

(B) *Insect damage* means an insect, insect fragment, web or frass attached to the kernel. No live insects shall be permitted.

(C) *Mold* which is readily visible on the shell or kernel.

(D) *Rancidity* means the kernel is distinctly rancid to taste. Staleness of flavor shall not be classed as rancidity.

(E) *Decay* means $^{1}/_{16}$th or more of the kernel surface is decomposed.

(5) *Other defects* means defects that cannot be considered internal defects or external defects. Such defects include, but are not limited to shell pieces, blanks, foreign materials or particles and dust. The following shall be considered other defects:

(i) *Shell pieces* means open inshell without a kernel, half shells or pieces of shell which are loose in the sample.

(ii) *Blanks* means a non-split shell not containing a kernel or containing a kernel that fills less than one-half of the shell cavity.

(iii) *Foreign material* means leaves, sticks, loose hulls or hull pieces, dirt, rocks, insects or insect fragments not attached to nuts, or any substance other than pistachio shells or kernels. Glass, metal or live insects shall not be permitted.

(iv) *Particles and dust* means pieces of nut kernels that will pass through $^{5}/_{64}$ inch round opening.

(v) *Undersized means* inshell pistachios that fall through a $^{30}/_{64}$-inch round hole screen.

(c) *Minimum quality certificate.* Each shipment for domestic human consumption must be covered by a USDA certificate certifying a minimum quality or higher. Pistachios that fail to meet the minimum quality specifications shall be disposed of in such manner as described in § 983.40.

(d) *Transfers between handlers.* Transfers between handlers within the production area are exempt from the minimum quality regulation of this section.

(e) *Minimum quality testing procedures.* To obtain a minimum quality certificate, each lot to be certified shall be uniquely identified, shall be traceable from testing through shipment by the handler and shall be subjected to the following procedure:

(1) *Sampling of pistachios for maximum defects and minimum size.* The gross weight of the inshell and kernel sample, and number of samplings required to meet the minimum quality regulation, is shown in the following Table 4. These samples shall be drawn from the lot that is to be certified pursuant to § 983.38(d)(1) under the

supervision of an inspector or as approved under an alternative USDA recognized inspection program.

TABLE 4.—INSHELL AND KERNEL PISTACHIO LOT SAMPLING INCREMENTS FOR MINIMUM QUALITY CERTIFICATION

| Lot weight (lbs.) | Number of incremental samples for the lot sample | Total weight of lot sample (grams) | Weight of inshell test sample (grams) | Weight of kernel test sample (grams) |
|---|---|---|---|---|
| 220 or less | 10 | 500 | 500 | 100 |
| 221–440 | 15 | 500 | 500 | 100 |
| 441–1100 | 20 | 600 | 500 | 100 |
| 1101–2200 | 30 | 900 | 500 | 100 |
| 2201–4400 | 40 | 1200 | 500 | 100 |
| 4401–11,000 | 60 | 1800 | 500 | 100 |
| 11,001–22,000 | 80 | 2400 | 1000 | 200 |
| 22,001–150,000 | 100 | 3000 | 1000 | 200 |

(2) *Testing of pistachios for maximum defect and minimum size.* The sample shall be analyzed according to USDA protocol to insure that the lot does not exceed maximum defects and meets at least the minimum size levels as specified in Table 3 of this part. For inshell pistachios, those nuts with dark stain, adhering hull, and those exhibiting apparent serious defects shall be shelled for internal kernel analysis. The USDA protocol appears in USDA inspection instruction manual ''Pistachios in the Shell, Shipping Point and Market Inspection Instructions,'' June 1994: revised September 1994, HU–125–9(b). Copies may be obtained from the Fresh Products Branch, Agricultural Marketing Service, USDA. Contact information may be found at http://www.ams.usda.gov/fv/fvstand.htm.

(f) *Certification of minimum quality.* Each inspector shall complete minimum quality testing and reporting and shall certify that every lot of California pistachios or portion thereof shipped domestically meets minimum quality levels as required in paragraph (a)(1) of this section. A record of each test, along with a record of final shipping disposition, shall be kept by each handler. These records must be maintained for three years, and are subject to audit by the committee at any time.

**§ 983.40 Failed lots/rework procedure.**

(a) *Substandard pistachios.* Each lot of substandard pistachios may be reworked to meet minimum quality requirements.

(b) *Failed lot reporting.* If a lot fails to meet the aflatoxin and/or the minimum quality requirements of this part, a failed lot notification report shall be completed and sent to the committee within 10 working days of the test failure. This form must be completed and submitted to the committee each time a lot fails either aflatoxin or the minimum quality testing. The accredited laboratories shall send the failed lot notification reports for aflatoxin tests to the committee, and the handler under the supervision of an inspector, shall send the failed lot notification reports for the lots that do not meet the minimum quality requirements to the committee.

(c) *Inshell rework procedure for aflatoxin.* If inshell rework is selected as a remedy to meet the aflatoxin requirements of this part, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic or manual procedures normally used in the handling of pistachios. After the rework procedure has been completed the total weight of the accepted product and the total weight of the rejected product shall be reported to the committee. The reworked lot shall be sampled and tested for aflatoxin as specified in § 983.38 except that the lot sample size and the test sample size shall be doubled. The reworked lot shall also be sampled and tested for the minimum quality requirements. If, after the lot has been reworked and tested, it fails the aflatoxin test for a second time, the lot may be shelled and the kernels reworked, sampled and tested in the manner specified for an original lot of kernels, or the failed lot may be used for non-human consumption or otherwise disposed of.

(d) *Kernel rework procedure for aflatoxin.* If pistachio kernel rework is selected as a remedy to meet the aflatoxin requirements of § 983.38, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic or manual procedures normally used in the handling of pistachios. After the rework procedure has been completed the total weight of the accepted product and the total weight of the rejected product shall be reported to the committee. The reworked lot shall be sampled and tested for aflatoxin as specified in § 983.38.

(e) *Minimum quality rework procedure for inshell pistachios and kernels.* If rework is selected as a remedy to meet the minimum quality requirements of § 983.39, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and processed to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic or manual procedures normally used in the handling of pistachios. The reworked lot shall be sampled and tested for the minimum quality requirements as specified in the minimum quality regulations of § 983.39.

**§ 983.41 Testing of minimal quantities.**

(a) *Aflatoxin.* Handlers who handle less than 1 million pounds of assessed weight per year, have the option of utilizing one of two following methods for testing for aflatoxin:

(1) The handler may have an inspector sample and test all of the hulled and dried pistachios before testing for aflatoxin certification.

(2) The handler may segregate receipts into various lots at the handler's discretion and have an inspector sample and test specific lots. Any lots that have less than 15.0 ppb aflatoxin can be certified by an inspector to be negative as to aflatoxin. Any lots that are found to be above 15.0 ppb may be tested after reworking in the same manner as specified in § 983.40.

(b) *Minimum quality.* Handlers who handle less than 1 million pounds of assessed weight can apply to the committee for an exception from minimum quality testing. If the

committee grants an exception, then the handler must pull and retain samples of the lots and make samples available for review by the committee. The handler shall maintain the samples for 90 days.

**§ 983.42 Commingling.**

After a lot is issued an aflatoxin inspection certificate and minimum quality certificate, it may be commingled with other certified lots.

**§ 983.43 Reinspection.**

Whenever the committee has reason to believe that pistachios may have been damaged or deteriorated while in storage, the committee may reject the then effective inspection certificate and require the owner of the pistachios to have a reinspection to establish whether or not such pistachios may be shipped for human consumption.

**§ 983.44 Inspection, certification and identification.**

Upon recommendation of the committee and approval of the Secretary, all pistachios that are required to be inspected and certified in accordance with this part, shall be identified by appropriate seals, stamps, tags, or other identification to be furnished by the committee and affixed to the containers by the handler under the direction and supervision of an inspector. All inspections shall be at the expense of the handler.

**§ 983.45 Substandard pistachios.**

The committee shall, with the approval of the Secretary, establish such reporting and disposition procedures as it deems necessary to ensure that pistachios which do not meet the outgoing maximum aflatoxin tolerance and minimum quality requirements prescribed by § 983.39 shall not be shipped for domestic human consumption.

**§ 983.46 Modification or suspension of regulations.**

(a) In the event that the committee, at any time, finds that, by reason of changed conditions, the regulations contained in § 983.38 through § 983.45 should be modified or suspended, it shall, by a vote of at least seven members, so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information, that the aflatoxin or minimum quality regulations (§ 983.38 or § 983.39) should be modified, suspended, or terminated with respect to any or all shipments of pistachios in order to effectuate the declared policy of the Act, the Secretary shall modify or suspend such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall suspend or terminate such regulation.

**Reports, Books and Records**

**§ 983.47 Reports.**

Upon the request of the committee, with the approval of the Secretary, each handler shall furnish such reports and information on such forms as are needed to enable the Secretary and the committee to perform their functions and enforce the regulations under this part. The committee shall provide a uniform report format for the handlers.

**§ 983.48 Confidential information.**

All reports and records furnished or submitted by handlers to the committee which include confidential data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler or their customers shall be received by, and at all times kept in the custody and under the control of, one or more employees of the committee, who shall disclose such data and information to no person except the Secretary. However, such data or information may be disclosed only with the approval of the Secretary, to the committee when reasonably necessary to enable the committee to carry out its functions under this part.

**§ 983.49 Records.**

Each handler shall maintain such records of pistachios received, held and shipped by him, as will substantiate any required reports and will show performance under this part. With the exception of records required to be retained under § 983.38(d)(5), such records shall be retained for at least 2 years beyond the crop year of their applicability.

**§ 983.50 Random verification audits.**

(a) All handlers' pistachio inventory shall be subject to random verification audits by the committee to ensure compliance with the terms of the order, and regulations adopted pursuant thereto.

(b) Committee staff or agents of the committee, based on information from the industry or knowledge of possible violations, may make buys of handler product in retail locations. If it is determined that violations of the order have occurred as a result of the buys, the matter will be referred to the Secretary for appropriate action.

**§ 983.51 Verification of reports.**

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this part, the Secretary and the committee, through their duly authorized agents, shall have access to any premises where pistachios and records relating thereto may be held by any handler and at any time during reasonable business hours, shall be permitted to inspect any pistachios so held by such handler and any and all records of such handler with respect to the acquisition, holding, or disposition of all pistachios which may be held or which may have been shipped by him.

**Expenses and Assessments**

**§ 983.52 Expenses.**

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each production year for the maintenance and functioning of the committee and for such other purposes as the Secretary may, pursuant to the provisions of this part, determine to be appropriate.

**§ 983.53 Assessments.**

(a) Each handler who receives pistachios for processing in each production year shall pay the committee on demand, an assessment based on the pro rata share of the expenses authorized by the Secretary for that year attributable to the assessed weight of pistachios received by that handler in that year.

(b) The committee, prior to the beginning of each production year, shall recommend and the Secretary shall set the assessment for the following production year, which shall not exceed one-half of one percent of the average price received by producers in the preceding production year. The committee, with the approval of the Secretary, may revise the assessment established prior to October 1 of each year if it determines, based on information including crop volume, that the action is necessary, and if the revision does not exceed the assessment limitations specified in this section and the modification is made prior to the date established for payment of the assessment.

**§ 983.54 Contributions.**

The committee may accept voluntary contributions but these shall only be used to pay for committee expenses.

**§ 983.55 Delinquent assessments.**

(a) Any handler who fails to file a return or pay any assessment within the time required by the committee shall

pay to the committee a penalty of 10 percent of the amount of the assessment determined to be past due and, in addition, interest on the unpaid balance at the rate of one and one-half percent per month. If delinquent for more than 60 days, then the committee can request that USDA stop providing certificates to the delinquent handler. The amount of the assessment may be changed by the Secretary upon recommendation of the committee.

(b) In addition to any other penalty imposed, the committee may require any person who fails to pay any assessment or related charge pursuant to this section to furnish and maintain a surety bond in a form and amount and for a period of time specified by the committee as assurance that all payments to the committee will be made when due.

**§ 983.56 Accounting.**

(a) If, at the end of a production year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected in accordance with § 983.53: *Provided,* That any sum paid by a person in excess of his/her pro rata share or the expenses during any production year may be applied by the committee at the end of such production year as credit for such person, toward the committee's fiscal operations of the following production year;

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent production years as a reserve: *Provided,* That funds already in the reserve do not exceed approximately two production years' budgeted expenses. In the event that funds exceed two production years' budgeted expenses, future assessments will be reduced to bring the reserves to an amount that is less than or equal to two production years' budgeted expenses. Such reserve funds may be used:

(i) To defray expenses, during any production year, prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any production year when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and

(iv) To cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected;

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements; and

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements for which that member was personally responsible, deliver all committee property and funds in the possession of such member to the committee, and execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the committee property, funds, and claims vested in such member pursuant to this part.

**Miscellaneous Provisions**

**§ 983.57 Compliance.**

Except as provided in this part, no handler shall handle pistachios, the handling of which has been prohibited or otherwise limited by the Secretary in accordance with provisions of this part; and no handler shall handle pistachios except in conformity to the provision of this part.

**§ 983.58 Rights of the Secretary.**

The members of the committee (including successors or alternates) and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension at the discretion of the Secretary, at any time. Each and every decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

**§ 983.59 Personal liability.**

No member or alternate member of the committee, nor any employee, representative, or agent of the committee shall be held personally responsible to any handler, either individually, or jointly with others, in any way whatsoever, to any person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

**§ 983.60 Separability.**

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

**§ 983.61 Derogation.**

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

**§ 983.62 Duration of immunities.**

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence thereof.

**§ 983.63 Agent.**

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as agent or representative of the Secretary in connection with any of the provisions of this part.

**§ 983.64 Effective time.**

The provisions of this part, as well as any amendments, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in § 983.66 or § 983.67.

**§ 983.65 Suspension or termination.**

The Secretary shall terminate or suspend the operation of any or all of the provisions of this part, whenever he finds that such provisions do not tend to effectuate the declared policy of the Act.

**§ 983.66 Referendum.**

(a) The Secretary may at any time terminate the provisions of this part.

(b) The Secretary shall terminate or suspend the operations of any or all of the provisions of this part whenever it is found that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever it is found that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of pistachios: *Provided,* That such majority has, during such representative period, produced for market more than fifty percent of the volume of such pistachios produced for market, but such termination shall be announced at least 90 days before the end of the current fiscal period.

(d) Within six years of [the effective date of this part] the Secretary shall conduct a referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by a two thirds (⅔) majority of voting producers, or a two thirds (⅔) majority of volume represented thereby, who, during a representative period determined by the Secretary, have been engaged in the production for market of pistachios in the production area. Such termination shall be announced on or before the end of the production year.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease.

**§ 983.67 Procedure upon termination.**

Upon the termination of this part, the members of the committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the committee. Action by such trustees shall require the concurrence of a majority of said trustees. Such trustees shall continue in such capacity until discharged by the Secretary, and shall account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such persons as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all the funds, properties, and claims vested in the committee or the joint trustees, pursuant to this part. Any person to whom funds, property, or claims have been transferred or delivered by the committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of said committee and upon said joint trustees.

**§ 983.68 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise, in connection with any provisions of this part or any regulation issued thereunder,

(b) Release or extinguish any violation of this part or any regulation issued thereunder, or

(c) Affect or impair any rights or remedies of the Secretary, or of any other persons, with respect to such violation.

**§ 983.69 Exemption.**

Any handler may handle pistachios within the production area free of the regulatory and assessment provisions of this part if such pistachios are handled in quantities not exceeding 1,000 dried pounds during any marketing year. This subpart may be changed as recommended by the committee and approved by the Secretary.

**§ 983.70 Relationship with the California Pistachio Commission.**

In conducting committee activities and other objectives under this part, the committee may deliberate, consult, cooperate and exchange information with the California Pistachio Commission. Any sharing of information gathered under this subpart shall be kept confidential in accordance with provisions under section 10(i) of the Act.

**§ 983.90 Counterparts.**

Handlers may sign an agreement with the Secretary indicating their support for this marketing order. This agreement may be executed in multiple counterparts by each handler. If more than fifty percent of the handlers, weighted by the volume of pistachios handled during a representative period, enter into such an agreement, then a marketing agreement shall exist for the pistachio marketing order. This marketing agreement shall not alter the terms of this part. Upon the termination of this part, the marketing agreement has no further force or effect.

**§ 983.91 Additional parties.**

After this part becomes effective, any handler may become a party to the marketing agreement if a counterpart is executed by the handler and delivered to the Secretary.

**§ 983.92 Order with marketing agreement.**

Each signatory handler hereby requests the Secretary to issue, pursuant to the Act, an order for regulating the handling of pistachios in the same manner as is provided for in this agreement.

Dated: June 19, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–15917 Filed 6–25–02; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–CE–23–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Cessna Aircraft Company Models 208 and 208B Airplanes

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

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

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to all Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. This proposed AD would require you to repetitively inspect the inboard forward flap bellcranks for cracks or replace bellcranks depending on the amount of usage. This proposed AD is the result of Cessna re-evaluating the bellcrank life limit analysis and determining that the original estimate is too high. The actions specified by this proposed AD are intended to detect, correct, and prevent future cracks in the bellcrank, which could result in failure of this part. Such failure could lead to damage to the flap system and surrounding structure and result in reduced or loss of control of the airplane.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before August 28, 2002.

**ADDRESSES:** Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–23–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday

through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–23–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may also view this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Paul Nguyen, Aerospace Engineer, FAA, Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4125; facsimile: 816–946–4407.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

*How do I comment on this proposed AD?*

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

*Are there any specific portions of this proposed AD I should pay attention to?*

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

*How can I be sure FAA receives my comment?*

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–23–AD.'' We will date stamp and mail the postcard back to you.

**Discussion**

*What events have caused this proposed AD?*

A search by the FAA of the service difficulty database has revealed 10 cracked bellcrank incidents on Cessna Models 208 and 208B airplanes. As a result, Cessna has re-evaluated the bellcrank life limit analysis and detemined 7,000 landings is more accurate than the original estimate of 9,000 landings. Cessna has revised the Models 208 and 208B Maintenance Manual and developed a service bulletin to notify the public that the inboard forward flap bellcrank life limit has been reduced to 7,000 landings. Since some Model 208 airplanes have exceeded 7,000 landings, we have determined that an AD is necessary to require replacement of the bellcrank in those airplanes.

*What are the consequences if the condition is not corrected?*

If not detected and corrected, a cracked bellcrank could fail. Such failure could lead to damage to the flap system and surrounding structure and result in reduced or loss of control of the airplane.

*Is there service information that applies to this subject?*

Cessna has issued Service Bulletin No. CAB02–1, dated February 11, 2002.

*What are the provisions of this service information?*

The service bulletin includes procedures for:

–Inspecting using eddy current methods, the inboard forward flap bellcrank for cracks; and

—Replacing bellcranks.

**The FAA's Determination and an Explanation of the Provisions of This Proposed AD**

*What has FAA decided?*

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Cessna Models 208 and 208B airplanes of the same type design;

—The life limits of the bellcranks should be reduced from 9,000 landings to 7,000 landings;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

*What would this proposed AD require?*

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

**Cost Impact**

*How many airplanes would this proposed AD impact?*

We estimate that this proposed AD affects 1,300 airplanes in the U.S. registry.

*What would be the cost impact of this proposed AD on owners/operators of the affected airplanes?*

We estimate the following costs to accomplish the proposed inspection:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 1 workhour × $60 per hour=$60. | No cost for parts | $60 | $60 × 1,300=$78,000. |

We estimate the following costs to accomplish any necessary replacements that would be required based on the reduced life limits:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 3 workhours × $60 per hour=$180 | $1,793 | $180 + $1,973=$1,973 | $1,973 × 1,300=$2,564,900. |

**Regulatory Impact**

*Would this proposed AD impact various entities?*

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 proposed rule would not have federalism implications under Executive Order 13132.

*Would this proposed AD involve a significant rule or regulatory action?*

For the reasons discussed above, I certify that this proposed action (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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, under 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. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

**CESSNA AIRCRAFT COMPANY:** Docket No. 2002–CE–23–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models 208 and 208B airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect, correct, and prevent cracks in the bellcrank, which could result in failure of this part. Such failure could lead to damage to the flap system and surrounding structure and result in reduced or loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Inspect, using eddy current inspection, the inboard forward flap bellcrank for cracks. | Initially inspect upon accumulation of 4,000 landings on the bellcrank or within the next 250 landings after the effective date of this AD, whichever occurs later. Repetitively inspect thereafter at every 500 landings until 7,000 landings are accumulated. | In accordance with the Inspection Instructions of Cessna Service Bulletin No. CAB02–1, dated February 11, 2002, and the applicable maintenance manual. |
| (2) Replace the inboard forward flap bellcrank. | Prior to further flight when cracks are found; and upon the accumulation of 7,000 landings or within the next 75 landings after the effective date of this AD, whichever occurs later. | In accordance with the Inspection Instructions of Cessna Bulletin No. CAB02–1, dated February 11, 2002, and the applicable maintenance manual. |

**Note 1:** Inboard forward flap bellcranks with 7,000 landings or more do not have to be replaced until 75 landings after the effective date of this AD.

**Note 2:** The compliance times of this AD are presented in landings instead of hours. If the number of landings is unknown, hours TIS may be used by multiplying the number of hours TIS by 1.25.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

**Note 3:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Paul Nguyen, Aerospace Engineer, FAA, Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4125; facsimile: 816–946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 14, 2002.

**Dorenda D. Baker,**

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

[FR Doc. 02–15804 Filed 6–25–02; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–43–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Various Boeing and McDonnell Douglas Transport Category Airplanes

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

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

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to various Boeing and McDonnell Douglas transport category airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning horn sounds. This action is necessary to prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by August 12, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–43–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–43–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.

This information referenced in the proposed rule may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** *Technical Information—Boeing Airplane Models:* Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2788; fax (425) 227–1181.

*Technical Information—McDonnell Douglas Airplane Models:* Joe Hashemi, Aerospace Engineer, Flight Test Branch, ANM–160L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5380; fax (562) 627–5210.

*Other Information:* Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–43–AD.'' The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–43–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

On October 25, 1999, a Learjet Model 35 airplane operating under part 135 of the Federal Aviation Regulations (14 CFR 135) departed Orlando International Airport en route to Dallas, Texas. Air traffic control lost communication with the airplane near Gainesville, Florida. Air Force and National Guard airplanes intercepted the airplane, but the flightcrews of the chase airplanes indicated that the windows of the Model 35 airplane were apparently frosted over, which prevented the flightcrews of the chase airplanes from observing the interior of the Model 35 airplane. The flightcrews of the chase airplanes reported that they did not observe any damage to the airplane. Subsequently, the Model 35 airplane ran out of fuel and crashed in South Dakota. To date, causal factors of the accident have not been determined. However, lack of the Learjet flightcrew's response to air traffic control poses the possibility of flightcrew incapacitation and raises concerns with the pressurization and oxygen systems.

Recognizing these concerns, the FAA initiated a special certification review (SCR) to determine if pressurization and oxygen systems on Model 35 airplanes were certificated properly, and to determine if any unsafe design features exist in the pressurization and oxygen systems.

The SCR team found that there have been several accidents and incidents that may have involved incapacitation of the flightcrews during flight. In one case, the airplane flightcrew did not activate the pressurization system or don their oxygen masks and the airplane flew in excess of 35,000 feet altitude. In another case, the airplane flightcrews did not don their oxygen masks when the cabin aural warning was activated. Further review by the SCR team indicates that the Airplane Flight Manual (AFM) of Learjet Model 35 and 36 airplanes does not have an emergency procedure that requires donning the flightcrew oxygen masks when the cabin altitude aural warning is activated. Additional review has found that the AFMs of Learjet Model 35A and 36A airplanes also do not contain appropriate flightcrew actions when the cabin altitude aural warning is activated. However, the AFMs do contain an abnormal procedure that allows the flightcrew to troubleshoot the pressurization system prior to donning the oxygen masks after the cabin altitude warning sounds. Troubleshooting may delay donning of the oxygen masks to the point that

flightcrews may become incapable of donning their oxygen masks.

The SCR findings indicated that the most likely cause for incapacitation was hypoxia (lack of oxygen). The only other plausible cause of incapacitation is exposure to toxic substances. However, no evidence was found to support the existence of toxic substances.

Delayed response of the flightcrew in donning oxygen masks as a first and immediate action upon the activation of the cabin altitude warning horn could lead to incapacitation of the flightcrew and loss of control of the airplane.

**Explanation of Applicability of Proposed AD**

A review of the emergency procedures in the AFMs for various Boeing and McDonnell Douglas transport category airplanes revealed that those AFMs do not contain the requirement for the flightcrew to immediately don emergency oxygen masks. Therefore, various Boeing and McDonnell Douglas transport category airplanes may be subject to the same unsafe condition as described above.

The FAA has determined that the AFMs for Boeing Model 737–600, 737–700, 737–800, 737–900, 747–400, 747–400D, 747–400F, 757, 767, and 777 series airplanes, and McDonnell Douglas Model 717–200 airplanes, already contain appropriate instructions for the donning of emergency oxygen masks. Therefore, these airplanes would not be subject to this proposed AD.

**Other Related Rulemaking**

We have previously issued AD 2000–23–10, amendment 39–11980 (65 FR 70294, November 22, 2000), which applies to all Lockheed Model 188A and 188C series airplanes. That AD requires a revision of the AFM to add procedures for donning the flightcrew oxygen masks when the cabin altitude warning horn is activated. The requirements of that AD are intended to prevent incapacitation of the flightcrew as a result of lack of oxygen and consequent loss of control of the airplane.

We have also previously issued AD 2001–22–10, amendment 39–12489 (66 FR 54425, October 29, 2001), which applies to all Dassault Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900EX series airplanes. That AD requires revising the Emergency Procedures and Abnormal Procedures sections of the AFM to advise the flightcrew to immediately don oxygen masks in the event of significant pressurization or oxygen level changes. The requirements of that AD are intended to prevent incapacitation of the flightcrew due to lack of oxygen, which could result in their inability to continue to control the airplane.

We are continuing to review emergency procedures in the AFMs for other airplane models to ensure that the AFMs contain appropriate instructions for donning the flightcrew oxygen masks. We may consider further rulemaking based on the results of these reviews.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of these same type designs, the proposed AD would require revising the Emergency Procedures Section of the AFM to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning horn sounds.

**Cost Impact**

There are approximately 7,077 airplanes (5,178 Boeing airplanes and 1,899 McDonnell Douglas airplanes) of the affected designs in the worldwide fleet. The FAA estimates that 3,479 airplanes (2,392 Boeing airplanes and 1,087 McDonnell Douglas airplanes) of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $208,740, or $60 per airplane.

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

**Regulatory Impact**

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Transport Category Airplanes:** Docket 2002–NM–43–AD.

*Applicability:* The airplanes listed in Table 1 of this AD, certificated in any category:

TABLE 1.—AFFECTED AIRPLANE MODELS

| Airplane manufacturer | Airplane model |
|---|---|
| Boeing | 707 series airplanes, 720 series airplanes, 727 series airplanes, 737–100 series airplanes, 737–200 series airplanes, 737–200C series airplanes, 737–300 series airplanes, 737–400 series airplanes, 737–500 series airplanes, 747–100 series airplanes, 747–100B series airplanes, 747–100B SUD series airplanes, 747–200B series airplanes, 747–200F series airplanes, 747–200C series airplanes, 747–300 series airplanes, 747SR series airplanes, 747SP series airplanes. |
| McDonnell Douglas | DC–8–11 airplanes, DC–8–12 airplanes, DC–8–21 airplanes, DC–8–31 airplanes, DC–8–32 airplanes, DC–8–33 airplanes, DC–8–41 airplanes, DC–8–42 airplanes, DC–8–43 airplanes, DC–8–51 airplanes, DC–8–52 airplanes, DC–8–53 airplanes, DC–8F–54 airplanes, DC–8–55 airplanes, DC–8F–55 airplanes, DC–8–61 airplanes, DC–8–61F airplanes, DC–8–62 airplanes, DC–8–62F airplanes, DC–8–63 airplanes, DC–8–63F airplanes, DC–8–71 airplanes, DC–8–71F airplanes, DC–8–72 airplanes, DC–8–72F airplanes, DC–8–73 airplanes, DC–8–73F airplanes, DC–9–11 airplanes, DC–9–12 airplanes, DC–9–13 airplanes, DC–9–14 airplanes, DC–9–15 airplanes, DC–9–15F airplanes, DC–9–21 airplanes, DC–9–31 airplanes, DC–9–32 airplanes, DC–9–32 (VC–9C) airplanes, DC–9–32F airplanes, DC–9–32F airplanes (C–9A, C–9B), DC–9–33F airplanes, DC–9–34 airplanes, DC–9–34F airplanes, DC–9–41 airplanes, DC–9–51 airplanes, DC–9–81 (MD–81) airplanes, DC–9–82 (MD–82) airplanes, DC–9–83 (MD–83) airplanes, DC–9–87 (MD–87) airplanes, MD–88 airplanes, MD–90–30 airplanes, DC–10–10 airplanes, DC–10–10F airplanes, DC–10–15 airplanes, DC–10–30 airplanes, DC–10–30F airplanes, DC–10–30F (KC–10A, KDC–10) airplanes, DC–10–40 airplanes, DC–10–40F airplanes, MD–10–10F airplanes, MD–10–30F airplanes, MD–11 airplanes, MD–11F airplanes. |

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

To prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane, accomplish the following:

**Revision to the Airplane Flight Manual**

(a) Within 90 days after the effective date of this AD: For the applicable airplane models listed in the ''For—'' column of Table 2 of this AD, revise the procedures regarding donning oxygen masks in the event of rapid depressurization, as contained in the Emergency Procedures section of the FAA-approved Airplane Flight Manual (AFM), by replacing the text in the ''Replace—'' column of Table 2 of this AD with the information in the applicable figure referenced in the ''With the Information In—'' column of Table 2 of this AD. This may be accomplished by recording the AD number of this AD on the applicable figure and inserting it into the AFM. Table 2 and Figures 1 through 9 follow:

TABLE 2.—AFM REVISIONS

| For— | Replace— | With the Information in— |
|---|---|---|
| Boeing Model 707, 720, and 727 series airplanes. | ''*RAPID DEPRESSURIZATION* .....<br>Oxygen Masks & Regulators ON, 100% ALL'' | Figure 1 of this AD. |
| Boeing Model 737–100, –200, and –200C series airplanes. | ''*RAPID DEPRESSURIZATION* (With airplane altitude above 14,000 feet M.S.L.).<br>PRIMARY<br>Oxygen Masks & Regulators—ON, 100%'' | Figure 2 of this AD. |
| Boeing Model 737–300, 737–400, 737–500, 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747SR, and 747SP series airplanes. | ''*RAPID DEPRESSURIZATION* (With airplane altitude above 14,000 feet M.S.L.).<br>RECALL<br>Oxygen Masks & Regulators—ON, 100%'' | Figure 3 of this AD. |
| McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, DC–8–43, DC–8–51, DC–8–52, DC–8–53, DC–8F–54, DC–8–55, DC–8F–55, DC–8–61, DC–8–61F, DC–8–62, DC–8–62F, DC–8–63, DC–8–63F, DC–8–71, DC–8–71F, DC–8–72, DC–8–72F, DC–8–73, and DC–8–73F airplanes. | ''*RAPID DEPRESSURIZATION* .....<br>*Phase I and II*<br>Crew oxygen mask—ON'' | Figure 4 of this AD. |

TABLE 2.—AFM REVISIONS—Continued

| For— | Replace— | With the Information in— |
|---|---|---|
| McDonnell Douglas Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–932F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, and DC–9–51 airplanes. | ''*RAPID DECOMPRESSION/EMERGENCY DESCENT* .....<br>*Phase I and II*<br>Manual Pressurization Control—FULL FORWARD AND MANUALLY LOCKED<br>Note: Manual Pressurization control forces may be high, apply forces as required<br>Crew Oxygen Masks—ON'' | Figure 5 of this AD. |
| McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. | ''*RAPID DECOMPRESSION/EMERGENCY DESCENT* .....<br>*Phase I and II*<br>Manual Pressurization Control—FULL FORWARD AND MANUALLY LOCKED<br>Note: Manual Pressurization control forces may be high, apply forces as required<br>Crew Oxygen Masks—ON/EMERGENCY/100%'' | Figure 6 of this AD. |
| McDonnell Douglas Model MD–90–30 airplanes. | ''RAPID DECOMPRESSION .....<br>OXY MASKS—ON/100%/EMERGENCY'' | Figure 7 of this AD. |
| McDonnell Douglas DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC–10A, KDC–10), DC–10–40, and DC–10–40F airplanes. | ''*RAPID DEPRESSURIZATION/EMERGENCY DESCENT* .....<br>*Recall*<br>Cabin OUTFLOW VALVE—VERIFY CLOSED (CLOSE ELECTRICALLY OR MANUALLY IF NOT CLOSED)<br>Oxygen Masks—100% (if required)'' | Figure 8 of this AD. |
| McDonnell Douglas MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes. | ''*CABIN ALTITUDE* .....<br>Memory Item<br>Outflow Valve—Verify Closed'' | Figure 9 of this AD. |

**BILLING CODE 4910–13–P**

**Figure 1**

**For Boeing Model 707, 720, and 727 Series Airplanes:**

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

**********

"CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION

If the cabin altitude warning horn sounds:

Oxygen Masks & Regulators ON, 100%, ALL"

**********

The rest of the steps under this heading in the AFM are unchanged.

**Figure 2**

**For Boeing Model 737-100, -200, and -200C Series Airplanes:**

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

**********

"CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION
If the cabin altitude warning horn sounds:

PRIMARY

Oxygen Masks & Regulators ON, 100%"

**********

The rest of the steps under this heading in the AFM are unchanged.

**Figure 3**

**For Boeing Model 737-300, 737-400, 737-500, 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200F, 747-200C, 747-300, 747SR, and 747SP Series Airplanes:**

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

**********

"CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION
If the cabin altitude warning horn sounds:

RECALL

Oxygen Masks & Regulators ON, 100%"

**********

The rest of the steps under this heading in the AFM are unchanged.

**Figure 4**

**For McDonnell Douglas Model DC-8-11, DC-8-12, DC-8-21, DC-8-31, DC-8-32, DC-8-33, DC-8-41, DC-8-42, DC-8-43, DC-8-51, DC-8-52, DC-8-53, DC-8F-54, DC-8-55, DC-8F-55, DC-8-61, DC-8-61F, DC-8-62, DC-8-62F, DC-8-63, DC-8-63F, DC-8-71, DC-8-71F, DC-8-72, DC-8-72F, DC-8-73, and DC-8-73F Airplanes:**

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

**********

"CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION
Phase I and II

If the cabin altitude warning horn sounds:

Crew oxygen mask ..... ON"

**********

The rest of the steps under this heading in the AFM are unchanged.

**Figure 5**

**For McDonnell Douglas Model DC-9-11, DC-9-12, DC-9-13, DC-9-14, DC-9-15, DC-9-15F, DC-9-21, DC-9-31, DC-9-32, DC-9-32 (VC-9C), DC-9-32F, DC-9-32F (C-9A, C-9B), DC-9-33F, DC-9-34, DC-9-34F, DC-9-41, and DC-9-51 Airplanes:**

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

**********

"CABIN ALTITUDE WARNING OR RAPID DECOMPRESSION/
EMERGENCY DESCENT
Phase I and II

If the cabin altitude warning horn sounds:

Crew Oxygen Mask .....ON

Manual Pressurization Control ..... FULL FORWARD AND MANUALLY LOCKED

Note: Manual Pressurization control forces may be high, apply forces as required."

**********

The rest of the steps under this heading in the AFM are unchanged.

**Figure 6**

**For McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 Airplanes:**

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

**********

"CABIN ALTITUDE WARNING OR RAPID DECOMPRESSION/
EMERGENCY DESCENT
Phase I and II

If the cabin altitude warning horn sounds:

Crew Oxygen Mask ..... ON/EMERGENCY/100%

Manual Pressurization Control ..... FULL FORWARD AND MANUALLY LOCKED

Note: Manual Pressurization control forces may be high, apply forces as required."

**********

The rest of the steps under this heading in the AFM are unchanged.

**Figure 7**

**For McDonnell Douglas MD-90-30 Airplanes:**

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

**********

**"CABIN ALTITUDE WARNING OR RAPID DECOMPRESSION**
If the cabin altitude warning horn sounds:

- OXY MASKS ..... ON/100%/EMERGENCY"

**********

The rest of the steps under this heading in the AFM are unchanged.

**Figure 8**

**For McDonnell Douglas Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F, DC-10-30F (KC-10A, KDC-10), DC-10-40, and DC-10-40F Airplanes:**

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

**********

"CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION/
EMERGENCY DESCENT
Recall

If the cabin altitude warning horn sounds:

Oxygen Masks ..... 100%

Cabin

OUTFLOW VALVE .....VERIFY CLOSED
(CLOSE ELECTRICALLY OR MANUALLY
IF NOT CLOSED)"

**********

The rest of the steps under this heading in the AFM are unchanged.

**Figure 9**

**For McDonnell Douglas Model MD-10-10F, MD-10-30F, MD-11, and MD–11F Airplanes:**

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

**********

**"CABIN ALTITUDE WARNING OR CABIN ALTITUDE**
If the cabin altitude warning horn sounds:

Memory Item

| |
|---|
| Oxygen Masks.....ON/100%/EMERGENCY |

| |
|---|
| Outflow Valve..... Verify Closed" |

**********

The rest of the steps under this heading in the AFM are unchanged.

BILLING CODE 4910–13–C

**Alternative Methods of Compliance**

(b) 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 Aircraft Certification Office (ACO), FAA; or the Manager, Los Angeles ACO, FAA; as applicable. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Seattle ACO, or Los Angeles ACO, as applicable.

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

**Special Flight Permits**

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

Issued in Renton, Washington, on June 14, 2002.

**Ali Bahrami,**

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

[FR Doc. 02–15661 Filed 6–25–02; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 201, 211, and 601

**[Docket No. 02N–0204]**

### Bar Code Label Requirements for Human Drug Products; Notice of Public Meeting; Correction

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

**ACTION:** Notice of public meeting; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a document that appeared in the **Federal Register** of June 18, 2002 (67 FR 41360). The document announced a public meeting to solicit comments for the development of a regulation on bar code labeling for human drug products, including biologic products. The

document published with two date errors in the **SUPPLEMENTARY INFORMATION** section. This document corrects those errors.

**DATES:** The public meeting will be held on July 26, 2002, from 9 a.m. to 5 p.m. Registration to attend the meeting must be received by July 12, 2002. Submit written or electronic comments for consideration during the meeting by July 12, 2002.

**ADDRESSES:** The meeting will be held at the Natcher Auditorium, Bldg. 45, National Institutes of Health (NIH), Bethesda, MD. Parking will be limited and there may be delays entering the NIH campus due to increased security. We recommend arriving by Metro if possible. NIH is accessible from the Metro's red line at the Medical Center/ NIH stop.

**FOR FURTHER INFORMATION CONTACT:** Doris Tucker, Office of Policy, Planning, and Legislation (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 02–15208 appearing on page 41360 in the **Federal Register** of Tuesday, June 18, 2002, the following corrections are made:

1. On page 41360 in the second column, in the eighth and ninth lines, the Internet site is corrected to read: http://www.fda.gov/oc/meetings/barcodemtg.html.

2. On page 41361 in the first column, under **II. Scope of Discussion**, in the first sentence the date ''June 13, 2002,'' is corrected to read: ''July 26, 2002,''.

3. On page 41361 in the third column, under **IV. Transcripts**, in the last sentence the date ''June 28, 2002,'' is corrected to read: ''August 16, 2002,''.

Dated: June 18, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–16049 Filed 6–25–02; 8:45 am]

**BILLING CODE 4160–01–S**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1228

**RIN 3095–AB03**

### Expanding Transfer Options for Electronic Records

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule will amend the regulations for the transfer of permanent records to NARA by permitting two additional electronic records transfer methods, File Transfer Protocol (FTP) and Digital Linear Tape IV (DLTtape IV). NARA is introducing these transfer methods to reduce the media and shipping costs of electronic records transferred from Government agencies, improve record and file integrity, and expand the options for transfer methods. This rule will affect Government agencies transferring permanent electronic records to the National Archives of the United States.

**DATES:** Comments are due by August 26, 2002.

**ADDRESSES:** Comments must be sent to Regulation Comment Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–837–0319. You may also comment via the Internet to *comments@nara.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jennifer Davis Heaps at telephone number 301–837–1801, or fax number 301–837–0319.

**SUPPLEMENTARY INFORMATION:** NARA currently accepts magnetic tape and compact-disk, read only memory (CD–ROM) as transfer media for records scheduled for permanent retention in the National Archives of the United States. DLTtape IV is a kind of magnetic tape cartridge. NARA has only used media-based transfer methods in the past, but has been testing other methods as well as additional media. With this rule, NARA proposes the addition of FTP transfer methods and DLT transfer media.

FTP is a media-less transfer method that can be used to transfer electronic records. FTP operates by using special software located at the sending and receiving sites. This software, in combination with a telecommunications network, provides the means for transferring electronic records. The agency may send any documentation in electronic format to NARA via FTP as part of the transfer of the electronic records or through any other acceptable method of transfer as specified in 36 CFR 1228.270.

DLTtape IV cartridge tape is a high-density magnetic cartridge tape that can store up to 40 gigabytes of information on each cartridge. DLTtape IV tapes are used by selected tape drive units produced by several companies. DLTtape IV preparation will follow existing cartridge tape specifications.

Paragraphs (a) and (b) in § 1228.270 have been rewritten for clarity and consistency with the new information in paragraph (c) of the same section.

Although this proposed rule does not address the format of electronic records described in paragraph (d), NARA is exploring the acceptance of formats other than ASCII and EBCDIC as part of its E-Government initiative. Any proposed changes in this area will be addressed in a separate rulemaking.

Please submit Internet comments within the body of your email message or as an attachment. Please also include ''Attn: 3095–AB03'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact the Regulation Comment Desk at 301–837–1801.

This proposed 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 regulation does not have any federalism implications.

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

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend part 1228 of title 36, Code of Federal Regulations, as follows:

## PART 1228—DISPOSITION OF FEDERAL RECORDS

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

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

2. Amend § 1228.270 by revising paragraphs (a), (b), and (c) to read as follows:

**§ 1228.270 Electronic records.**

(a) *Timing of transfers.* Each agency is responsible for the integrity of the permanent records it transfers on physical media to the National Archives of the United States. For records transferred by a media-less method, NARA works with the agency to ensure integrity of the records during the transfer process. To ensure that permanent electronic records are preserved, each Federal agency must transfer electronic records to NARA promptly in accordance with the agency's records disposition schedule. Furthermore, if the agency cannot provide proper care and handling of the media (see part 1234 of this chapter), or if the media are becoming obsolete and the agency cannot migrate the records to

newer media, the agency must contact NARA to arrange for timely transfer of permanent electronic records, even when sooner than provided in the records schedule.

(b) *Temporary retention of copy.* Each agency must retain a second copy of any permanent electronic records that it transfers to the National Archives of the United States until it receives official notification from NARA that the transfer was successful and that NARA has assumed responsibility for continuing preservation of the records.

(c) *Transfer media.* This paragraph covers the transfer of permanent records to the National Archives; it does not apply to the use or storage of records in agency custody. See 36 CFR 1234.30 for the requirements governing the selection of electronic records storage media for current agency use. The agency must use only media that is sound and free from defects for transfers to the National Archives of the United States; the agency must choose reasonable steps to meet this requirement. The approved media and media-less transfer forms are open reel magnetic tape, magnetic tape cartridge; Compact-Disk, Read Only Memory (CD–ROM); and File Transfer Protocol (FTP) as described in paragraphs (c) (1), (2) and (3) of this section.

(1) *Magnetic tape.* Agencies may transfer electronic records to the National Archives on magnetic tape as follows:

(i) Open-reel magnetic tape must be on ½ inch 9-track tape reels recorded at 1600 or 6250 bpi that meet ANSI X3.39–1986, American National Standard: Recorded Magnetic Tape for Information Interchange (1600 CPI, PE) or ANSI X3.54–1986, American National Standard: Recorded Magnetic Tape for Information Interchange (6250 CPI, Group Coded Recording), respectively.

(ii) Tape cartridges may be 18-track 3480-class cartridges. The 3480-class cartridge must be recorded at 37,871 bpi that meet ANSI X3.180–1990, American National Standard: Magnetic Tape and Cartridge for Information Interchange—18-Track, Parallel, ½ inch (12.65 mm), 37871 cpi (1491 cpmm), Group-Coded—Requirements for Recording. The data must be blocked at no more than 32,760 bytes per block.

(iii) Tape cartridges may be DLTtape IV cartridges that must be recorded in an uncompressed format and written to the tape using a Tape Archive (TAR) utility. The data must be blocked at no more than 32,760 bytes per block and must conform to the standards cited in the table as follows:

| If you are copying the record on . . . | . . . then, the standard below applies. |
|---|---|
| DLTtape IV with a DLT 4000 drive. | ISO/IEC 15307, Information technology—Data interchange on 12,7 mm 128-track magnetic tape cartridges—DLT 4 format (20 GB native, 40 GB compressed, 1.5 MB/sec). |
| DLTtape IV with a DLT 7000 drive. | ISO/IEC 15896, Information technology—Data interchange on 12,7 mm 208-track magnetic tape cartridges—DLT 5 format (35 GB native, 70 GB compressed, 5.0 MB/sec). |
| DLTtape IV with a DLT 8000 drive. | ISO/IEC 16382, Information technology—Data interchange on 12,7 mm 208-track magnetic tape cartridges—DLT 6 format (40 GB native, 80 GB compressed, 6.0 MB/sec). |

(2) * * *

(i) CD–ROMs used for this purpose must conform to ANSI/NISO/ISO 9660–1990, American National Standard for Volume and File Structure of CD–ROM for Information Exchange.

(ii) Permanent electronic records must be stored in discrete files. The CD–ROMs transferred may contain other files, such as software or temporary records, but all permanent records must be in files that contain only permanent records. Agencies must indicate at the time of transfer if a CD–ROM contains temporary records and, if so, where those records are located on the CD–ROM. The agency must also specify whether NARA should return the CD–ROM to the agency or dispose of it after copying the permanent records to an archival medium.

(iii) If permanent electronic records that an agency disseminates on CD–ROM exist on other media, such as magnetic tape, the agency and NARA will mutually agree on the most appropriate medium for transfer of the records to the National Archives of the United States.

(3) *File Transfer Protocol.* Agencies may use File Transfer Protocol (FTP) to transfer electronic records scheduled for preservation at the National Archives of the United States. The files transferred via FTP must comply with the format and documentation requirements specified in paragraphs (d) and (e) of this section.

(i) FTP file structure must conform to an 8.3 file naming convention and file directory structure as cited in ANSI/NISO/ISO 9660–1990, American National Standard for Volume and File Structure of CD–ROM for Information Exchange.

(ii) Permanent electronic records must be stored in discrete files, separate from temporary files. All permanent records must be transferred in files that contain only permanent records.

(iii) When permanent electronic records may be disseminated through other types of mechanisms (e.g., magnetic tape, CD–ROM), the agency and NARA will mutually agree on the most appropriate medium for transfer of the records to the National Archives and will select the appropriate files for FTP transfer. Several important factors may limit the use of FTP as a transfer method, including the number of records, record file size, and available bandwidth. NARA will retain approval for appropriateness of FTP as the selected mechanism for each scheduled records transfer based on certain criteria (file size, FTP transfer rate, record classification, etc.). Agencies interested in sending electronic records scheduled for transfer to NARA through FTP must contact NARA's Electronic and Special Media Records Services Division (NWME), 8601 Adelphi Rd., College Park, MD 20740–6001 or by email to *cer@nara.gov* to initiate the transfer discussions.

(iv) Each permanent electronic records transfer must be preceded with a signed Agreement to Transfer Records to the National Archives of the United States (Standard Form 258) sent to the Office of Records Services—Washington, DC (NWME), 8601 Adelphi Road, College Park, MD 20740–6001.

(4) *Incorporation by reference.* The standards cited in § 1228.270(c)(1), (2), and (3) are available from the American National Standards Institute, 11 West 42nd Street, 13th floor, New York, NY 10036. The standards cited for CD–ROM, FTP, and DLTTtapeIV are also available from the National Information Standards Organization (NISO), Press Fulfillment, P.O. Box 451, Annapolis Junction, MD 20701. All these standards are also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. 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. These materials are incorporated by reference as they exist on the date of

approval and a notice of any change in these materials will be published in the **Federal Register**.

* * * * *

Dated: May 15, 2002.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 02–16047 Filed 6–25–02; 8:45 am]

**BILLING CODE 7515–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA261–0344b; FRL–7227–7]**

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from motor vehicle and mobile equipment, can and coil, and wood products coating operations, as well as, VOC emissions from graphic arts and polyester resin operations. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by July 26, 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 documents (TSDs) 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; and,

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

**FOR FURTHER INFORMATION CONTACT:** Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 749–4111.

**SUPPLEMENTARY INFORMATION:** This proposal concerns the following SJVUAPCD rules: Rule 4602—Motor Vehicle and Mobile Equipment Coating Operations; Rule 4604—Can and Coil Coating Operations; Rule 4606—Wood Products Coating Operations; Rule 4607—Graphic Arts; and, Rule 4684—Polyester Resin Operations. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive any adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 22, 2002.

**Keith Takata,**

*Associate Regional Administrator, Region IX.*

[FR Doc. 02–16034 Filed 6–25–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[PA183–4195b; FRL–7230–9]**

### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and $NO_X$ RACT Determinations for Hershey Chocolate USA and Pennsylvania Power Company

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania to establish and require reasonably available control technology (RACT) for Hershey Chocolate USA and Pennsylvania Power Company, New Castle Plant. Hershey Chocolate USA is located in Dauphin County, Pennsylvania and is a major source of nitrogen oxides ($NO_X$). The Pennsylvania Power Company's New Castle Plant is located in Lawrence County, Pennsylvania and is a major source of $NO_X$ and volatile organic compounds (VOC). In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by July 26, 2002.

**ADDRESSES:** Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Janice Lewis at (215) 814–2185 or Betty Harris at (215) 814–2168, the EPA Region III address above or by e-mail at *lewis.janice@epa.gov* or *harris.betty@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action for Pennsylvania's VOC and $NO_X$ RACT determinations for Hershey Chocolate USA and Pennsylvania Power Company, New Castle Plant, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment for a specific source or subset of sources covered by an amendment, paragraph, or section of

this rule, only that amendment, paragraph, or section of that source or subset of sources will be withdrawn.

Dated: June 3, 2002.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region III.*

[FR Doc. 02–16037 Filed 6–25–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[Docket ID–15–6995b; FRL–7232–2]**

### Approval and Promulgation of Sandpoint, ID, Air Quality Implementation Plan

**AGENCY:** Environmental Protection Agency (EPA or ''we'').

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency proposes to approve a State Implementation Plan (SIP) revision submitted for the Sandpoint nonattainment area in the State of Idaho.

Sandpoint was classified as nonattainment for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers ($PM_{10}$) pursuant to the Clean Air Act Amendments of 1990. As a result, Idaho was required to submit a plan for bringing the area into attainment. This action proposes to approve the plan for Sandpoint submitted on August 16, 1996.

In the Final Rules section of this **Federal Register**, the EPA is approving the State's State Implementation Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Written comments must be received on or before July 26, 2002.

**ADDRESSES:** Send written comments to: Donna Deneen (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101 and the Idaho Department of Environmental Quality, 1420 North Hilton, Boise, Idaho 83706–1255. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

**FOR FURTHER INFORMATION CONTACT:** Ms. Donna Deneen (OAQ–107), Office of Air Quality, EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–6706.

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, *see* the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: May 30, 2002.

**Ron Kreizenbeck,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 02–16140 Filed 6–25–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[AZ–113–0054b; FRL–7233–7]**

### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Arizona

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the moderate area plan and maintenance plan for the Payson area in Arizona and grant a request submitted by the State to redesignate the area from nonattainment to attainment for the air quality standards for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10).

**DATES:** Comments on this proposal must be received by July 26, 2002.

**ADDRESSES:** Please address your comments to Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. You may inspect and copy the rulemaking docket for this document at the EPA Region IX office. We may charge you a reasonable fee for copying parts of the docket.

Copies of the SIP materials are also available for inspection at the address listed below: Arizona Department of Environmental Quality, Office of Outreach and Information, First Floor, 3033 N. Central Avenue, Phoenix, AZ 85012–2809

**FOR FURTHER INFORMATION CONTACT:** Dave Jesson, Air Planning Office (AIR–2), EPA Region 9, at (415) 972–3957 or: *jesson.david@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the Rules and Regulations section of this **Federal Register**, we are approving the moderate area plan and maintenance plan for the Payson PM10 nonattainment area. We are also approving the State of Arizona's request to redesignate the area to attainment. We are taking these actions without prior proposal because we believe that the revision and request are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is

planned. For further information, please see the direct final action.

Dated: June 6, 2002.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 02–16105 Filed 6–25–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[AZ–109–0051b; FRL–7233–4]**

### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Arizona

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the moderate area plan and maintenance plan for the Bullhead City area in Arizona and grant a request submitted by the State to revise the boundaries and redesignate the area from nonattainment to attainment for the air quality standards for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10).

**DATES:** Comments on this proposal must be received by July 26, 2002.

**ADDRESSES:** Please address your comments to Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. You may inspect and copy the rulemaking docket for this document at the EPA Region IX office. We may charge you a reasonable fee for copying parts of the docket.

Copies of the SIP materials are also available for inspection at the address listed below: Arizona Department of Environmental Quality, Office of Outreach and Information, First Floor, 3033 N. Central Avenue, Phoenix, AZ 85012–2809.

**FOR FURTHER INFORMATION CONTACT:** Dave Jesson, Air Planning Office (AIR–2), EPA Region 9, at (415) 972–3957 or: *jesson.david@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the Rules and Regulations section of this **Federal Register**, we are approving the moderate area plan and maintenance plan for the Bullhead City PM10 nonattainment area. We are also approving the State of Arizona's request to revise the area boundaries and redesignate the area to attainment. We are taking these actions without prior proposal because we believe that the revision and request are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 6, 2002.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 02–16144 Filed 6–25–02; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

**[Docket No. FEMA–P–7607]**

### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov.*

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

**National Environmental Policy Act**

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Acting Administrator for Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.4 Proposed flood elevation determination.**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| Source of flooding and location of referenced elevation | *Elevation in feet (NGVD) | | Communities affected |
|---|---|---|---|
| | Existing | Modified | |
| Greenbrier Creek: | | | |
| Approximately 200 feet downstream of the confluence of Little Greenbrier Creek. | None ..... | 288 | Town of Wooster, Faulkner County. |
| Approximately 7,100 feet upstream of the Town of Wooster corporate limits. | None ..... | 295 | |
| Greenbrier Creek Tributary No. 2: | | | |
| At the mouth of Greenbrier Creek Tributary No. 2 ..... | None ..... | 288 | Town of Wooster, Faulkner County. |
| Approximately 1,350 feet upstream of Green Valley Road. | None ..... | 319 | |
| Greenbrier Creek Tributary No. 3: | | | |
| At the mouth of Greenbrier Creek Tributary No. 3 ..... | None ..... | 288 | Town of Wooster. |
| Approximately 50 feet upstream of a private drive about 1,600 feet upstream of Reed Road. | None ..... | 325 | |
| Skyline Creek: | | | |
| At the mouth of Skyline Creek ..... | None ..... | 292 | Town of Wooster, Faulkner County. |
| Approximately 725 feet upstream of Green Valley Road. | None ..... | 312 | |
| Maps are available for inspection at City Hall, 7 Reed Road, Wooster, Arkansas. | | | |
| Send comments to The Honorable Johnnie D. Stone, Mayor, Town of Wooster, P.O. Box 43, Wooster, Arkansas 72181. | | | |
| Maps are available for inspection at the Community Map Repository, 801 Locust Street, Conway, Arkansas. | | | |
| Send coments to The Honorable John Wayne Carter, Judge, Faulkner County, 801 Locust Street, Conway, Arkansas 72032. | | | |
| Peruque Creek: | | | |
| Approximately 260 feet upstream of State Highway 79. | *453 ..... | *452 | St. Charles County, City of O'Fallon, City of St. Paul. |
| Just downstream of Church Street ..... | *535 ..... | *533 | City of Lake St. Louis. |
| Maps are available for inspection at the County Administration Building, 201 North Second Street, Room 420, St. Charles, Missouri. | | | |
| Send comments to Mr. Joe Ortwerth, St. Charles County Executive, 100 North Third Street, Suite 318, St. Charles, Missouri 63301. | | | |
| Maps are available for inspection at City Hall, 138 South Main Street, O'Fallon, Missouri. | | | |
| Send comments to The Honorable Paul Renaud, Mayor, City of O'Fallon, 100 North Main Street, O'Fallon, Missouri 63366. | | | |
| Maps are available for inspection at City Hall, St. Paul, Missouri 63366. | | | |
| Send comments to The Honorable Jay Sigmund, Mayor, City of St. Paul, 1265 Lydia Lane, St. Paul, Missouri 63366. | | | |
| Maps are available for inspection at City Hall, 1000 Lake St. Louis Boulevard, Lake St. Louis, Missouri. | | | |
| Send comments to The Honorable Michael Potter, Mayor, City of Lake St. Louis, 1000 Lake St. Louis Boulevard, #16, Lake St. Louis, Missouri 63367. | | | |
| Cottonwood Creek: | | | |
| Just upstream of SE 14th Street ..... | *464 ..... | *467 | City of Dallas, City of Grand Prairie. |
| Approximately 700 feet upstream of Great Southwest Parkway. | *529 ..... | *531 | |
| Duck Creek: | | | |
| Approximately 600 feet downstream of Collins Road | *457 ..... | *458 | City of Dallas, City of Garland, City of Mesquite, Town of Sunnyvale. |
| Just downstream of Beltline Road ..... | *593 ..... | *592 | Dallas County. |
| South Fork Cottonwood Creek: | | | |
| Approximately 150 feet downstream of Carrier Parkway. | *487 ..... | *486 | City of Garland. |
| Just downstream of Great Southwest Parkway ..... | *548 ..... | *547 | |
| Stream 2C2: | | | |
| At the mouth of Stream 2C2 ..... | *496 ..... | *494 | City of Grand Prairie. |
| Approximately 630 feet upstream of Glenbrook Drive | *496 ..... | *495 | |
| Stream 8D1: | | | |
| At the mouth of Stream 8D1 ..... | *465 ..... | *467 | City of Dallas, City of Grand Prairie. |
| Approximately 50 feet downstream of Belt Line Road | None ..... | *489 | |
| Stream 8D3: | | | |
| Approximately 300 feet downstream of Southeast 4th Street. | *473 ..... | *474 | City of Grand Prairie. |
| Approximately 75 feet downstream of South Center Street. | None ..... | *488 | |
| Stream 8D6: | | | |

| Source of flooding and location of referenced elevation | *Elevation in feet (NGVD) | | Communities affected |
|---|---|---|---|
| | Existing | Modified | |
| At the mouth of Stream 8D6 | *504 | *505 | City of Grand Prairie. |
| Approximately 2,350 feet upstream of Arkansas Lane. | None | *544 | |
| Stream 8D7: | | | |
| Approximately 2,000 feet downstream of Sherman Street. | *495 | *496 | City of Grand Prairie. |
| Approximately 50 feet downstream of Sherman Street. | None | *512 | |

Maps are available for inspection at the Administration Building, 411 Elm Street, 4th Floor, Dallas, Texas.

Send comments to The Honorable Lee F. Jackson, County Judge, Dallas County, Administration Building, 411 Elm Street, 2nd Floor, Dallas, Texas 75202.

Maps are available for inspection at 320 East Jefferson Boulevard, Dallas, Texas.

Send comments to The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla Street, Dallas, Texas 75201–6390.

Maps are available for inspection at 200 North 5th Street, Garland, Texas.

Send comments to The Honorable Jim Spence, Mayor, City of Garland, 200 North 5th Street, P.O. Box 469002, Garland, Texas 75046–9002.

Maps are available for inspection at the City Development Center, 206 West Church Street, Grand Prairie, Texas.

Send comments to The Honorable Charles England, Mayor, City of Grand Prairie, 317 College Street, Grand Prairie, Texas 75053–4045.

Maps are available for inspection at 320 East Jefferson Boulevard, Dallas, Texas.

Send comments to The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, Texas 75185–0137.

Maps are available for inspection at 537 Long Creek Road, Sunnyvale, Texas.

Send comments to The Honorable Jim Phaup, Mayor, Town of Sunnyvale, 537 Long Creek Road, Sunnyvale, Texas 75182.

*National Geodetic Vertical Datum

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: June 18, 2002.

**Robert F. Shea,**

*Acting Administrator, Federal Insurance and Mitigation Administration.*

[FR Doc. 02–15934 Filed 6–25–02; 8:45 am]

**BILLING CODE 6718–04–P**

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 541

**[Docket No. NHTSA–2002–12231]**

**RIN 2127–AI46**

## Federal Motor Vehicle Theft Prevention Standard

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Pursuant to the Motor Vehicle Theft Law Enforcement Act of 1984, NHTSA issued the Federal Motor Vehicle Theft Prevention Standard requiring specified parts of high-theft vehicles to be marked with an identifying number. The Anti Car Theft Act of 1992 requires NHTSA to conduct a rulemaking to extend the parts marking requirements of that Standard to all passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less, regardless of theft rate, unless the Attorney General finds that such a requirement would not substantially inhibit chop shop operations and motor vehicle thefts. The Attorney General has examined the evidence and concluded that the standard should be extended. Therefore, NHTSA is required to issue this proposal to extend the parts marking requirements to all passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less, and to light duty trucks with major parts that are interchangeable with a majority of the covered major parts of multipurpose passenger vehicles.

**DATES:** Comments must be received on or before August 26, 2002.

**ADDRESSES:** You may submit your comments in writing to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document. You can find the docket number at the beginning of this document.

**FOR FURTHER INFORMATION CONTACT:** For technical and policy issues, you may call Deborah Mazyck, Office of Planning and Consumer Programs, (Telephone: 202–366–0846) (Fax: 202–493–2290).

For legal issues, you may call Dion Casey, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

You may call Docket Management at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

A copy of the draft justification statement for the proposed collection of information associated with this rulemaking may be obtained by contacting Walter Culbreath, NHTSA Information Collection Clearance Officer, Office of Administration (Telephone: 202–366–1566). Please identify the relevant collection of information by referring to OMB Clearance No. 2127–0510. A copy of the draft justification statement will also be available in the docket. The docket number is in the heading of this notice.

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## I. Background

### *A.The Motor Vehicle Theft Law Enforcement Act of 1984*

In 1984, Congress enacted the Motor Vehicle Theft Law Enforcement Act (the 1984 Theft Act) in response to escalating motor vehicle thefts.[1] The 1984 Theft Act was designed to reduce the incidence of motor vehicle thefts and simplify the tracing and recovery of parts from stolen vehicles. The 1984 Theft Act directed NHTSA to issue a theft prevention standard requiring vehicle manufacturers to mark major parts of high-theft passenger car lines with identifying numbers or symbols.[2]

In response, NHTSA issued the Federal Motor Vehicle Theft Prevention Standard (49 CFR part 541). (50 FR 43166, October 24, 1985). The standard applies only to those motor vehicle lines that the agency has designated as high-theft.[3] Manufacturers of these high-theft passenger motor vehicle lines must mark the following ''major parts'' in those lines with the vehicle identification number (VIN): Engine, transmission, hood, fenders, side and rear doors (including sliding and cargo doors and decklids, tailgates, or hatchbacks, whichever is present), bumpers, quarter panels, and pickup boxes and/or cargo boxes.[4] (50 FR 43166, October 24, 1985). The standard also requires replacement parts for these parts to be marked with the manufacturer's registered trademark, or some other unique identifier, and the letter ''R.'' [5] The standard became effective beginning with the 1987 model year.

Manufacturers can meet the parts marking requirements with indelibly marked labels that cannot be removed without becoming torn or rendering the number on the label illegible. If removed, the labels must leave a residue on the part after being removed so that investigators will have evidence that a label was originally present. Alteration of the number on the label must leave traces of the original number or otherwise visibly alter the appearance of the label material. A replacement major part must be marked with the registered trademark of the manufacturer of the replacement part, or some other unique identifier, and the letter ''R''.

The 1984 Theft Act allowed for an exemption from the parts marking requirements for certain vehicle lines in which antitheft devices were installed as standard equipment. The 1984 Theft Act limited each manufacturer to two new exemptions per model year.[6] The manufacturer must petition NHTSA to obtain an exemption. The agency grants the exemption if it determines that the devices are likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements.

### *B. The Anti Car Theft Act of 1992*

In 1991, NHTSA submitted a report to Congress assessing the motor vehicle theft problem and evaluating the effectiveness of parts marking.[7] At that time, however, only two years of theft and recovery data were available for vehicles with marked parts. As a result, the agency could not obtain evidence of the effectiveness of parts marking through statistical analysis of theft and recovery rates.

Nevertheless, the agency found wide support for parts marking in the law enforcement community. Investigators stated that parts marking provided them with a valuable tool for detecting, apprehending, and prosecuting vehicle thieves. After considering the evidence and public comments obtained during the preparation of the 1991 report, the agency recommended that the theft prevention standard be continued with minor changes.[8]

As a result of the agency's recommendations and other information, Congress enacted the Anti Car Theft Act of 1992 (the 1992 Theft Act). The 1992 Theft Act extended the parts marking requirements to multipurpose passenger vehicles (MPVs) (i.e., passenger vans and sport-utility vehicles) and light duty trucks (pickup trucks and cargo vans) with a gross vehicle weight rating (GVWR) of 6,000 pounds or less that NHTSA designated as high-theft. The 1992 Theft Act also extended the parts marking requirements to selected motor vehicle lines that were below the 1990/1991 median theft rate.

As in the 1984 Theft Act, the 1992 Theft Act required NHTSA to report to Congress on the effects of the Act on trends in motor vehicle thefts and recovery by 1997.[9] The 1992 Theft Act also required the Attorney General to submit two reports, an initial review of the effectiveness of parts marking,[10] and a long-range review of the effectiveness of parts marking [11] to the Secretary of Transportation. The 1992 Theft Act requires the Attorney General to make a finding that the Secretary shall extend the standard unless the Attorney General finds instead that extending the standard would not substantially inhibit

[1] Pub. L. 98–547.

[2] The 1984 Theft Act is codified at 49 U.S.C. 33101, *et seq.* Section 33102(a)(1) reads: ''The standard shall apply to—(A) covered major parts that manufacturers install in passenger motor vehicles in lines designated under section 33104 of this title as high theft lines; and (B) major replacement parts for the major parts described in clause (A) of this paragraph.'' Section 33101(10) defines a ''passenger motor vehicle'' as including ''a multipurpose passenger vehicle or light duty truck when that vehicle or truck is rated at not more than 6,000 pounds gross vehicle weight.

[3] Appendix C to part 541 specifies the criteria for selecting lines that are likely to have high theft rates, and thus are subject to the parts marking requirements. These criteria include: the retail price of the vehicle line; the vehicle image or marketing strategy; the vehicle lines with which the line is intended to compete, and the theft rates of those lines; the theft rate for the line; and the presence or absence of any theft prevention devices.

[4] The engine and transmission may be marked with either the 17-digit VIN or an 8-digit VIN derivative.

[5] 49 CFR 541.6.

[6] NHTSA's procedures for exempting vehicles from the theft prevention standard are contained in 49 CFR part 543. Manufacturers were allowed two exemptions per model year through the 1996 model year. Beginning with the 1997 model year, manufacturers were allowed one exemption per model year.

[7] Auto Theft and Recovery: Effects of the Motor Vehicle Theft Law Enforcement Act of 1984, Report to Congress, March 1991. The 1984 Theft Act required this report.

[8] The agency recommended the following changes: (1) That the agency be allowed to establish a median theft rate based on data from the most current model year; (2) that the agency be allowed to re-designate a car line from likely high theft to likely low theft if that line had proved to be below an established median theft rate for a specified number of years; and (3) that manufacturers be allowed an unlimited number of exemptions for vehicles with anti-theft devices installed as standard equipment.

[9] A copy of this report, Auto Theft and Recovery: Effects of the Anti Car Theft Act of 1992 and the Motor Vehicle Theft Law Enforcement Act of 1984, Report to Congress, July 1998, has been placed in the docket. The agency published a preliminary version of this report in the **Federal Register** on June 26, 1997, and requested comments on it. (62 FR 34494).

[10] 49 U.S.C. 33103(c). The Act does not specify a due date for the initial review.

[11] 49 U.S.C. 33103(d). The Act mandates that the long-range review be completed by December 31, 1999.

chop shop operations and motor vehicle thefts.

Under the 1992 Theft Act, the Secretary of Transportation is required to apply the parts marking requirements to the remaining lines of passenger motor vehicles (except light duty trucks) if the Attorney General finds in the initial review that they should be so applied.[12]

*C. The Attorney General's Initial Review and Findings*

On July 21, 2000, the Attorney General submitted the initial review to NHTSA. The Attorney General has not yet completed the long-range review.

In the July 21, 2000 initial review, the Attorney General reported to the Secretary of Transportation on the effectiveness of the parts marking requirements.[13] The Attorney General concluded:

> After conducting an initial review of the effectiveness of the vehicle theft prevention standard as required by the Act, I have determined that the available evidence warrants application of the vehicle theft prevention standard to the remaining motor vehicle lines. That is, the evidence does not support a finding that requiring motor vehicle manufacturers to mark major parts in all motor vehicle lines will not substantially inhibit chop shop operations and motor vehicle thefts. Therefore, the parts marking requirement should be expanded.

The Attorney General based this conclusion on information from several sources, including data from the Federal Bureau of Investigation (FBI), which reported automobile thefts by model, model year, state, and registration year from 1981 through 1995, and R.J. Polk, Inc., which provided data on car registrations for that time period. The Department of Justice (DOJ) also contracted with Abt Associates to report on the effectiveness of automobile parts marking.[14]

## II. Problem Description

*A. Motor Vehicle Theft*

Motor vehicle thefts occur for a variety of reasons that can generally be used to group thefts into two categories: professional and non-professional.[15] Professionals steal vehicles primarily for three purposes: chop shop operations, theft and retag, and thefts for export.

Chop shop operations are businesses that acquire stolen vehicles or hire thieves to provide vehicles so that parts can be removed and sold for profit. These parts may eventually be bought by others to repair damaged vehicles since they sell for substantially less than original equipment parts.

Theft and retag occurs when vehicles are stolen and sold for profit to be registered under another VIN. The new VIN and title are obtained by purchasing a junked vehicle of the same make and model. The VIN plate is transferred from the junked vehicle to the stolen vehicle, and the title is altered to match the stolen vehicle.

Thefts for export occur when vehicles are stolen and illegally shipped out of the United States to be sold for profit.

Non-professionals steal vehicles primarily for three purposes: insurance fraud, concealing one's identity while committing another crime, and joyriding or temporary transportation.

An individual commits insurance fraud by ''stealing'' his or her own vehicle, or having somebody else ''steal'' and hide it, so he or she can collect its insured value. After the insurance company pays, the vehicle may be abandoned by the thieves, eventually recovered, and end up as the property of the insurance company. Insurance fraud usually occurs when the owner is in financial distress or the actual value of a vehicle is much lower than its insured value.

Non-professional vehicle thieves also steal vehicles to conceal their identity while committing another crime, since the stolen vehicle cannot easily be traced to the criminal. These thieves usually use stolen vehicles for transportation to and from the scene of the crime. Such vehicles usually are abandoned soon afterward and eventually recovered.

Finally, non-professionals steal vehicles for joyriding or temporary transportation. Such vehicles are usually abandoned and recovered after a matter of hours or days.

According to data from the FBI's National Crime Information Center (NCIC), almost 1.2 million motor vehicles were stolen in 1995. Passenger cars accounted for 71 percent of all motor vehicle thefts in 1995. Light duty trucks and MPVs accounted for 24 percent. The remaining five percent were thefts of motorcycles, buses, and heavy trucks.

Of the more than 1 million vehicles stolen each year, approximately 200,000 are never recovered. Chop shop operations, theft and retagging, thefts for export, and insurance fraud are believed to account for most of the unrecovered vehicles.

*B. Costs of Motor Vehicle Theft*

The overall cost of motor vehicle thefts to the United States economy is difficult to estimate. Not all thefts are reported. The precise value of stolen and recovered vehicles may be unknown. Moreover, ancillary costs, such as insurance administration, police work, and the loss of victims' time (i.e., filling out reports, appearing in court, acquiring substitute transportation, etc.) are difficult to gauge.

However, motor vehicle theft is the number one property crime in the United States. The FBI estimates that in calendar year 2000, there were 1,165,559 reported stolen vehicles with an average value of $6,682; thus, the total value of vehicles stolen was almost $7.8 billion.[16]

## III. Effectiveness of Parts Marking

*A. Deterring Motor Vehicle Thefts*

Parts marking deters motor vehicle theft and aids theft investigators in several ways. First, when a car is stolen, as long as the marking on at least one part remains intact, investigators can more easily trace the car to its owner, prove it was stolen, and make an arrest. Second, motor vehicle theft investigators in many jurisdictions have been given the authority to seize parts or vehicles when markings have been damaged or removed. Third, investigators in most jurisdictions treat the absence of intact markings as a ''red flag'' indicating a need for further investigation. Fourth, in those jurisdictions requiring inspections of restored cars before they can be re-titled, parts marking assists officers in identifying vehicles that have been reassembled using stolen parts.

Parts marking also aids in prosecuting chop shop owners and dealers in stolen vehicles and parts. The ease with which thieves, operators of chop shops, and dealers in stolen parts can be prosecuted is a significant deterrent to motor vehicle theft and the operation of chop shops.

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[12] The ''remaining lines'' referred to are lines of passenger cars and MPVs that have not been designated as high-theft vehicle lines. The term does not refer to lines of light duty trucks, which would continue to be subject to the procedures for selecting vehicle lines subject to the parts marking requirements regardless of the Attorney General's findings. As in the past, lines of light duty trucks would be subject to the parts marking requirements only if NHTSA designated them as high-theft vehicle lines.

[13] A copy of the initial review has been placed in the docket.

[14] Abt Associates, ''An Evaluation of the Effectiveness of Automobile Parts Marking on Preventing Theft,'' July 1, 1999. A copy of this report has been placed in the docket.

[15] This discussion is a summary of the 1998 report NHTSA submitted to Congress. A copy of this report has been placed in the docket.

[16] Federal Bureau of Investigation, ''Crime in the United States, 2000,'' pp. 53 and 286. This report can be found on the FBI website at *http://www.fbi.gov/ucr/ucr.htm.*

NHTSA believes that parts marking deters professional rather than non-professional motor vehicle thieves. Parts marking allows law enforcement agencies to identify stolen vehicles or parts removed from stolen vehicles. This makes it more difficult for professional thieves to market stolen vehicles and parts, and aids officials in apprehending and prosecuting professional thieves.

Parts marking probably does not deter non-professional thieves who steal motor vehicles to use for joyriding or temporary transportation since these thieves do not intend to re-sell the vehicles or their parts. Non-professional thieves probably are deterred more by anti-theft devices (e.g., car alarms) that make vehicles more difficult to steal.

Abt Associates conducted an analysis of auto theft data to determine the effectiveness of parts marking. NHTSA provided Abt Associates with theft and recovery data. NHTSA's data came from two principal sources: the FBI, which reported automobile thefts, and R.L. Polk, Inc., which provided data on car registrations. Both data sets were classified by model, model year, state, and registration year from 1984 through 1995. Taken together, these two sets of data yielded estimates of the automobile theft rates for that time period.

NHTSA also provided Abt Associates with information indicating which cars were subject to the parts marking requirements. Abt Associates augmented these data by adding information based on Census statistics and FBI Uniform Crime Reports, and analyzing data on automobile theft from the National Crime Victimization Survey (NCVS.)

Abt Associates' best estimate is that between 33 and 158 fewer cars are stolen by professional thieves per 100,000 cars that were marked between 1987 and 1995. Abt Associates stated that they were not confident that the statistical analysis accurately estimated the effect of parts marking for various reasons. Nevertheless, Abt Associates stated that the available evidence is consistent with the conclusion that parts marking does reduce automobile theft, even if the size of the effect is uncertain.

This finding is consistent with the findings in NHTSA's 1998 Report to Congress. The agency was unable to generate reliable quantitative estimates of the effectiveness of parts marking. However, the agency's analysis found several indications that parts marking was having beneficial effects. For example, the agency noted that for model years 1986 and 1987, when the parts marking requirements were introduced, cars with marked parts had lower theft rates than expected, while those with unmarked parts had higher rates than expected.[17]

*B. Cost of Parts Marking*

The 1984 Theft Act limits the cost that may be imposed by the parts marking requirements to $15 per vehicle (in 1984 dollars).[18] However, the Act permits the cost limit to be adjusted for inflation, based on the Consumer Price Index.[19] The limit in 2000 dollars, which NHTSA is using for purposes of this proposed rule, is $24.86 per vehicle.[20]

Based on a 1988 NHTSA study, the agency estimated that the average cost of parts marking was $4.14 per vehicle in 1988 dollars.[21] This cost estimate took into account overhead costs and profit, but excluded the cost of marking engines and transmissions, which were marked prior to the 1984 Theft Act, and thus not included in the statutory limit. Based on the Consumer Price Index, the agency estimates that the cost of parts marking is $6.03 per vehicle, an amount well within the statutory limit of $24.86.

In its 1998 Report to Congress, discussed in greater detail below, NHTSA estimated that in order to be cost effective, parts marking would have to reduce by two percent theft among vehicles that were up to three years old.[22]

## IV. Agency Proposal

*A. Expansion of the Parts Marking Requirements*

As noted above, the 1992 Theft Act requires the Secretary of Transportation to apply the parts marking requirements to the remaining lines of passenger motor vehicles (except light duty trucks) unless the Attorney General finds in the initial review that such a requirement would not substantially inhibit chop shop operations and motor vehicle thefts. As noted above, after studying the available evidence, the Attorney General concluded that the evidence does not support a finding that requiring motor vehicle manufacturers to mark major parts in all motor vehicle lines would not substantially inhibit chop shop operations and motor vehicle thefts and therefore found that the standard should be extended.

Accordingly, the agency is proposing that the parts marking requirement be applied to all ''remaining lines,'' which includes passenger cars and MPVs, but not light duty trucks, with a GVWR of 6,000 pounds or less. Light duty trucks, i.e., pickup trucks and cargo vans, would continue to be subject to the current procedures for selecting high-theft lines to be covered by the theft prevention standard.

NHTSA notes that 49 CFR 542.2 provides procedures for selecting new low theft vehicle lines with major parts that are interchangeable with a majority of the major parts of a high theft vehicle line. These low theft vehicle lines with interchangeable parts are subject to the parts marking requirements.[23]

The agency specified this requirement in a final rule mandated by the 1984 Theft Act, which provided:

> Lines whose theft rate is or is likely to be below the median theft rate, but whose major component parts are interchangeable with a majority of the major component parts of a line that is subject to the theft prevention standard * * *, are high theft lines * * * However, car lines whose theft rate is or is likely to be below the median theft rate will not be treated as high theft lines * * * if such low theft or likely low theft lines account for greater than 90 percent of total production of all lines containing such interchangeable parts. (50 FR 34831, August 28, 1985).

In explaining the purpose of this requirement, NHTSA stated:

> Congress determined that, although certain vehicles are not themselves from a high theft line, the high degree of interchangeability of their parts with those of a high theft line would make these otherwise low theft vehicles likely targets for car thieves. As likely targets for car thieves, Congress determined that all covered major parts on these vehicles should be marked, not just those that were interchangeable with the covered major parts of the high theft line. This will serve as an additional deterrent to the theft of these vehicles. (50 FR 34835, August 28, 1985).

NHTSA believes that under the changes proposed in this document, a similar situation could arise with MPV

[17] The agency noted that this effect weakened as the cars aged, probably because professional thieves learned how to obliterate the markings and found them less of a deterrent.

[18] 49 U.S.C. 33105(a).

[19] 49 U.S.C. 33105(c).

[20] In setting this limit, Congress intended MPVs and light duty trucks with a GVWR of 6,000 pounds or less to be included in the cost estimate for parts marking motor vehicles, event though these vehicles were excluded from the parts marking requirements.

[21] ''Evaluation of Methods and Costs to Mark Vehicle Parts for Theft Prevention: Volume 1'' NHTSA, DOT HS 87, 616, September 1988.

[22] Abt Associates concluded that the parts marking requirements would be cost effective if they prevented from 8 to 19 car thefts per 100,000 marked cars.

[23] These vehicle lines are listed in Appendix B to Part 541—Passenger Motor Vehicle Lines (Except Light Duty Trucks) With Theft Rates Below the 1990/91 Median Theft Rate, Subject to the Requirements of this Standard. Only four lines are listed in this table: Honda Civic, Ford Crown Victoria, Chevrolet Astro (MPV), and GMC Safari (MPV).

lines that have major parts interchangeable with light duty truck lines. The agency notes that passenger vans and sports utility vehicles are classified as MPVs while cargo vans and pickup trucks are classified as light duty trucks. The agency's proposal would expand the parts marking requirements to all MPVs, but maintain the requirement that only light duty trucks that have been designated as high theft lines be marked. Therefore, a passenger van or sports utility vehicle line, which is classified as an MPV, and thus would have to be marked, could have major parts interchangeable with a cargo van or pickup truck line, which is classified as a light duty truck, and thus would not have to be marked if it were not designated as a high theft line.

An example of this is the General Motors Savana Van. There are two classes of the Savana Van, a passenger van version, which is classified as an MPV, and a cargo van version, which is classified as a light duty truck. Under the agency's proposal, the passenger van version would have to be marked because it is an MPV, while the cargo van version would not have to be marked, unless General Motors or NHTSA designated it as a high theft line.

Many of the major parts of these two vans are identical. If the agency does not require both versions to be marked, law enforcement could be compromised. For example, if police officers found a fender from a Savana Van at a chop shop, they would not be able to determine whether it should have been marked.

To address this problem, NHTSA is proposing to add a new §542.3, modeled on § 542.2.

The agency is proposing to exclude low theft light duty truck lines that have major parts that are interchangeable with a majority of the covered major parts of multipurpose passenger vehicles if those light duty trucks account for more than 90 percent of the total production of all lines containing those interchangeable parts. As noted above, in the 1984 Theft Act Congress specifically excluded vehicle lines that are low theft but have major parts that are interchangeable with a majority of the covered parts of a high theft vehicle line if the low theft line accounted for more than 90 percent of the total production of all lines containing those interchangeable parts, and NHTSA specifically excluded such vehicle lines in the 1985 final rule establishing 49 CFR part 542.

NHTSA requests comment on the number of light duty truck lines that would have to be marked under this proposal because they have major parts that are interchangeable with a majority of the covered parts of a MPV. The agency also requests comment on the cost of extending the parts marking requirements to all the vehicle lines discussed above, and on the potential effectiveness of parts marking in deterring thefts of these vehicles.

NHTSA is proposing September 1, 2005 as the effective date for the new rule. The agency believes that this would provide enough lead-time to allow manufacturers to mark new vehicle lines and those vehicle lines previously determined to be low-theft, and thus not subject to the parts marking requirements. Although NHTSA believes that marking parts on additional vehicle lines would not be difficult, the agency believes that manufacturers may need this lead-time to buy additional parts-marking equipment, determine vehicles' target areas for parts marking, and decide whether to submit a petition for exemption from the parts marking requirements. The agency requests comment on whether this is sufficient lead-time for manufacturers.

*B. Permanence of Markings*

1. The 1984 Final Rule

When labels are used to comply with the parts marking requirements, 49 CFR Part 541 requires that the VIN or VIN derivative be printed indelibly on the label, and that the label be permanently affixed to the part. If the label is removed, it must self-destruct by tearing or making the VIN illegible. Removing the label also must alter the appearance of the area where the label was affixed so that evidence remains that a label was originally there. Any attempts to alter the number on a label must leave traces of the original number.

NHTSA adopted these performance requirements in the final rule establishing the theft prevention standard. (50 FR 43166, October 24, 1984). In the final rule, NHTSA noted that several commenters, including law enforcement agencies, suggested that the agency mandate the use of a particular marking system, such as stamping or glass etching. The commenters asserted that the use of a particular marking system would ensure the greatest effectiveness for the theft prevention standard.

In response, the agency noted that it did not have the authority to mandate the use of any particular marking system. Under the 1984 Theft Act, the agency had authority only to establish performance criteria that would accomplish the purposes of the 1984 Theft Act. This conclusion was based on the legislative history of the 1984 Theft Act. The agency quoted from page 10 of the House Committee Report accompanying the 1984 Theft Act:

> The DOT will establish the tests or general criteria which the identification must meet, but not how it is to be inscribed or affixed. That is the choice of each manufacturer. For example, we understand that a tamper-resistant label exists. If it can meet the performance tests or general criteria prescribed by the standard, the manufacturer may choose to use it to comply with the standard. (H.R. Rep. No. 1087, 98th Cong., 2d Sess., at 10 (1984), hereinafter cited as H. Rept.). (50 FR 43166).

The House Committee Report identified the following three essential purposes for the 1984 Theft Act:

> (1) To prevent thefts and reduce the ease with which certain stolen vehicles and their major parts can be fenced;
>
> (2) To try to minimize regulation of the domestic and foreign motor vehicle manufacturing industry; and
>
> (3) To give law enforcement officers at all levels of government the much-needed prosecutory tools to crack criminal theft rings and related racketeering activities. H. Rept. at 2.

The agency believed that the requirements of the theft prevention standard, as written in the final rule, would serve all of these purposes. The standard required any markings affixed to a part to be permanent, and removal of the markings to discernibly alter the appearance of that area of the part where the label was affixed. In addition, the agency noted that the 1984 Theft Act made it a crime to possess a part from which the identification number had been removed,[24] and the part was subject to seizure and forfeiture.[25] The agency believed that those requirements would help to deter thefts and reduce the ease with which stolen vehicles and their parts could be fenced. Further, by allowing manufacturers to choose how they would meet the performance requirements, the agency believed that the standard minimized regulation of the motor vehicle manufacturing industry. Finally, NHTSA believed that the evidence left by the removal of affixed markings gave law enforcement officials prosecutorial tools to crack theft rings.

2. The 1986 Response to Petitions for Reconsideration

The agency also addressed this issue in its response to petitions for reconsideration of the final rule. In their petitions, three law enforcement groups objected to the absence of a requirement

[24] 18 U.S.C. 2320.

[25] 18 U.S.C. 512.

that some of the required markings be stamped into a part. The Federal Bureau of Investigation (FBI) requested the agency to amend the final rule to require the full VIN, or a derivative thereof, to be stamped into a permanent metal part of each vehicle. The International Association of Auto Theft Investigators (IAATI) and the Criminal Division of the U.S. Department of Justice (DOJ) asked that the agency modify the final rule to require that the markings be stamped into the frame, engine, and transmission.

The agency responded:

> With respect to the request that the markings be required to be stamped into some covered major parts, NHTSA again concludes that the clearly-expressed Congressional intent would not allow the agency to require explicitly that markings be stamped into the parts. However, NHTSA acknowledges that it could indirectly require markings to be inscribed into some parts by setting higher performance standards for those parts. For instance, NHTSA could add a performance standard for some parts that the marking must be capable of being restored to its original form by chemical means, if the marking is altered or obliterated. Such a requirement would force manufacturers to inscribe the markings into those parts, by etching, sandblasting, stamping, and the like. However, NHTSA has concluded that it would be premature to impose such a requirement. (51 FR 8831, March 14, 1986).

The agency concluded that it would be premature to impose such a requirement because there was not any empirical evidence that affixed markings complying with the performance requirements in the final rule would not adequately serve the needs of law enforcement. However, the agency stated, ''If it becomes clear that affixed markings are, in fact, not serving the legitimate needs of law enforcement, NHTSA will consider amending the performance requirements of this theft prevention standard.'' (51 FR 8831, March 14, 1986).

3. The 1998 Report to Congress

On June 26, 1997, NHTSA published a preliminary version of its 1998 Report to Congress on the effectiveness of the parts marking requirements in the **Federal Register** and requested comments. (62 FR 34494, Docket No. 97–042, RIN 2127–AF55). Several commenters, primarily law enforcement agencies, recommended that the agency require the markings to be more permanent. The Iowa State Patrol recommended that the agency require all major parts to be stamped with the VIN or a VIN derivative. The Metropolitan Dade County (Florida) Police Department and the Florida Auto Theft Intelligence Unit suggested a label that, when removed, leaves a footprint with the full VIN.

Vehicle manufacturers opposed more permanent methods of parts marking. The American Automobile Manufacturer's Association (AAMA), whose members were Chrysler Corporation, Ford Motor Company, and General Motors Corporation, claimed that requiring the stamping or inscribing of the VIN into major vehicle parts would result in a ''substantial increase in costs.'' However, AAMA stated that it had not had time to develop cost estimates.

4. The 1999 Abt Associates' Report to the Attorney General

As part of its 1999 report to the Attorney General, Abt Associates conducted a survey of auto theft investigators from 47 jurisdictions, including 31 of the 32 largest cities in the U.S. (plus Miami), six smaller municipalities, and nine State agencies. These jurisdictions include the majority of jurisdictions with the highest auto theft rates in the U.S. The investigators reported that the most serious obstacle to making more effective use of the parts marking labels is that they are easy to remove and, once removed, it is impossible to prove that the parts are stolen because the owner cannot be traced.

5. The 2000 Attorney General's Initial Review

The DOJ published the Abt Associates' report in the **Federal Register** and requested comments on whether expanding the parts marking requirements would be an effective deterrent to motor vehicle thefts, additional costs, and available alternative factors.[26] In the July 21, 2000 initial review, the Attorney General noted:

> The investigators surveyed overwhelmingly supported more permanent markings, as did those who commented in response to the DOJ Notice * * * In fact, investigators identified the lack of permanence as the most significant obstacle to increasing the effective use of markings.

Based on the Abt Associates survey and these comments, the Attorney General stated in the July 21, 2000 initial review, ''I have concluded that permanence is at the heart of any effective marking system, and therefore I urge DOT to require permanent, non-removable markings.'' However, the Attorney General did not suggest any specific requirements or methods for more permanent markings.

[26] 63 FR 48758, September 11, 1998.

6. Questions on More Permanent Methods of Parts Marking

Based on the comments of law enforcement agencies to both NHTSA's preliminary version of its 1998 Report to Congress,[27] the Abt Associates report to the Attorney General,[28] and the Attorney General's initial review, it appears that the current parts marking requirements are not meeting the legitimate needs of law enforcement. Accordingly, NHTSA is considering proposing to adopt performance requirements that would necessitate the use of more permanent methods of parts marking. NHTSA is not including any such proposals in this document because the agency needs more information to aid it in formulating specific proposals. To obtain that information, the agency has set out a series of questions below.

The first several questions are similar to questions that the agency asked when it published the preliminary version of its 1998 Report to Congress.[29] The agency received little specific information on more permanent parts marking methods and their costs. The agency believes that ample time has passed since then for law enforcement agencies, vehicle and label manufacturers, and other organizations to provide more specific answers to these questions. NHTSA also believes that answers to these questions will aid the agency in determining what additional performance requirements and test procedures would be effective and appropriate. Thus, the agency is asking these questions again.

1. Are there more permanent methods of parts marking that can be accomplished within the Congressionally mandated cost limit of $24.86 (in 2000 dollars) per vehicle?

2. Please include documentation on the markings method, how permanent the markings are (how difficult it is to remove the markings and what evidence is likely to remain after removal that there were markings), and cost estimates, including the cost of any materials, equipment, tooling, and labor. If the application of performance requirements necessitating the use of more permanent methods were limited so that they applied to only some of the parts required to be marked, which parts should be marked by those methods and how much cost could be saved.

3. Please identify the economic year for the cost estimates.

4. Please describe how the markings are applied using the more permanent

[27] 62 FR 34493, June 26, 1997.

[28] 63 FR 48785, September 11, 1998.

[29] 62 FR 34493, June 26, 1997.

methods, including the time needed to mark all the major vehicle parts.

In addition, the agency requests answers to the following new questions:

5. Are more permanent methods of parts marking necessary?[30] Please provide empirical evidence, i.e., evidence that labels have been removed from stolen vehicles and parts, and that enforcement efforts have been compromised as a result. How common a problem is this? Please document your answer to the extent possible.

6. As discussed above, NHTSA does not have the authority to adopt a requirement that expressly identifies a specific method of parts marking, such as stamping or etching, and mandate it. However, it can adopt performance requirements that have the effect of requiring a particular method or methods. With that in mind, what objective performance requirements and test procedures would be effective and appropriate for requiring more permanent methods of parts marking?

7. How would these performance requirements and test procedures ensure that insufficiently permanent parts marking methods would be disallowed?

NHTSA will use the answers to these questions in deciding whether to issue a separate proposal for new performance requirements and test procedures.

*C. Marking Air Bags and Window Glazing*

Currently, air bags and window glazing are not classified as major parts subject to the parts marking requirements.

The agency's latest data show that 65.5 million passenger cars are equipped with frontal air bags (51.6 million with dual air bags, and 13.9 million with only a driver-side air bag); 40.3 million light trucks and MPVs are equipped with frontal air bags (28.7 million with dual air bags, and 11.6 million with only a driver-side air bag); 3.2 million passenger cars are equipped with side air bags; and 1.3 million light trucks and MPVs are equipped with side air bags.

The National Insurance Crime Bureau reports that approximately 50,000 air bags are stolen each year, resulting in an annual loss of more than $50 million to vehicle owners and their insurers. The cost to replace air bag modules ranges from $500 to $1,500. The agency is particularly concerned by thefts of air bags because they are an important piece of safety equipment. The agency believes that marking air bags could aid in parts recovery and for use as evidence of vehicle theft.

The agency does not believe that window glazing theft is a widespread problem. Window glazing markings are not for the purpose of preventing glazing from being stolen, but for the purpose of deterring vehicle theft, especially theft and retag operations. The agency believes that marking glazing could provide additional identification of motor vehicles and their replacement parts, as well as providing an additional deterrent to theft of the entire vehicle.

Both the 1998 NHTSA Report to Congress and the 1999 Abt Associates report addressed the issue of expanding the parts marking requirements to cover additional parts. Results of Abt's survey of auto theft investigators indicate that almost all investigators would like the parts marking requirements expanded to cover additional parts. Several commenters on NHTSA's preliminary version of its 1998 Report to Congress supported extending parts marking to air bags and window glazing. Law enforcement agencies and consumer organizations favored subjecting air bags and window glazing to the parts marking requirements. The Florida Motor Vehicle Theft Prevention Authority stated:

> Theft of air bags is a significant problem, and there are few tools that exist to assist the auto theft investigator in identifying stolen air bags, and more importantly, in being able to prosecute individuals for the purchase and sale of stolen air bags.

The Metropolitan Dade County (Florida) Police Department asserted:

> Window etching is another visible marking that needs to be placed on all vehicles at the factory. Window etching acts as a deterrent and an investigative tool. Chop shop operations have had to replace all of the glass on stolen vehicles. Many times this changing of glass is readily identifiable to auto theft investigators. Numerous times, thieves have left windows with the original VIN etched on while altering the rest of the vehicle.

Vehicle manufacturers opposed subjecting air bags and window glazing to the parts marking requirements. Toyota claimed that requiring window glazing to be marked would result in ''additional and unreasonable labor costs to coordinate the marking numbers of the glazing materials with their respective vehicles, all without any demonstrable benefit.'' The AAMA stated that there are serious problems with marking air bag modules for the following reasons:

> Modules are not designated for a specific vehicle prior to installation in the vehicle. Stamping of the air bag housing as a separate part prior to assembly of the air bag is not practicable. In addition, stamping the air bag module at the vehicle assembly plant is also not practicable due to the inherent risk of damage to the module, plus the risk of accidental deployment.

Based on the effectiveness of parts marking in reducing thefts of vehicles and major parts, NHTSA believes that classifying air bags and glazing as major parts subject to the parts marking requirements could deter air bag and vehicle thefts and aid law enforcement agencies in apprehending and prosecuting the thieves. However, the agency currently does not have the statutory authority to subject air bags and window glazing to the parts marking requirements.[31] Nevertheless, the agency is requesting comments on the potential costs and benefits of marking air bags and window glazing and whether the agency should pursue the statutory authority. The agency requests comment on the following questions:

8. What information exists regarding the frequency with which the absence of marking requirements for air bags and glazing compromises law enforcement?

9. Assuming that the agency had the necessary authority, would it be sufficient if the agency required the marking of only specified glazing, e.g., the front and rear windshield glazing, instead of all glazing in a vehicle? If so, which glazing should be specified?

10. How would such a limitation affect the costs of glazing marking?

11. Would marking air bags with the VIN of a specific vehicle be practicable given that they are not designated for a specific vehicle prior to installation?

12. Assuming that the agency had the necessary authority, should the agency require the marking of only frontal air bags, or all air bags, i.e., frontal, side, and side head air bags?

Please provide a rationale with evidence to support any recommendations.

*D. Exemptions*

The agency notes that this proposed rule would have no effect on exemptions from the parts marking

[30] NHTSA considers the comments of a law enforcement agencies discussed above to be sufficient evidence for the agency to consider requiring more permanent methods of parts marking. However, before issuing a proposed rule specifying additional performance reqirements, the agency would like empirical evidence that current methods of parts marking are insufficient to meet the needs of law enforcement agencies.

[31] 49 U.S.C. 33101(6) defines major parts as the engine, transmission, doors, hood, grille, bumpers, front fender, deck lid, tailgate, hatchback, rear quarter panels, truck floor pan, frame, and any other part of a vehicle that NHTSA specifies as comparable in design or function to any of the specified parts. The agency believes that neither air bags nor window glazing are comparable in design or function to any of the specified parts.

requirements. Currently, 49 U.S.C. 33104(d) provides that once a line has been designated as likely high-theft, it remains subject to the parts marking requirements unless it is exempted under section 33106.[32] Under § 33106, vehicle manufacturers may petition the agency to have a high-theft line exempted from the parts marking requirements, if the line is equipped with an anti-theft device as standard equipment. The exemption is granted if NHTSA determines that the anti-theft device is likely to be as effective as compliance with the parts marking requirements in reducing and deterring motor vehicle thefts.

Under section 33106(2), manufacturers were permitted up to two new exemptions per model year for the model years 1988–1996. For the model years 1997–2000, manufacturers were permitted only one new exemption per model year. After the model year 2000, the number of new exemptions is contingent on findings by the Attorney General.

As discussed earlier in this document, the statute requires the Attorney General to submit two reports, an initial review of the effectiveness of parts marking,[33] and a long-range review of the effectiveness of parts marking.[34] As part of the long-range review, the Attorney General must determine whether the anti-theft devices for which NHTSA grants exemptions ''are an effective substitute for parts marking in substantially inhibiting motor vehicle theft.''[35] Thus, the Attorney General must decide whether NHTSA should continue granting exemptions, and, if so, the number of exemptions the agency may grant per model year.

To date, the Attorney General has submitted only the initial review, not the long-range review.[36] Therefore, the Attorney General has not yet decided whether the exemptions should continue.

In the absence of this review, NHTSA faced the question of whether Congress intended to terminate the exemption authority after model year 2000, or whether it intended the exemptions to be continued pending the Attorney General's decision. After consulting with the Department of Justice, the agency determined that the appropriate reading of the statute is that NHTSA may continue to grant one new exemption per model year as specified by the statute for model years 1997–2000, pending the Attorney General's decision. Thus, the agency has continued to such exemptions.

This proposed rule would not affect these exemptions. Manufacturers would still be allowed to petition the agency to exempt one new line each model year, if the line is equipped with an anti-theft device as standard equipment. NHTSA will revisit this issue when the Attorney General submits the long-range review to the agency.

*E. Small Volume Manufacturers*

Currently, there are approximately 4 vehicle manufacturers that qualify as small businesses under the Small Business Administration's regulations. Because of their small sales volumes, these manufacturers' vehicles have not been subject to the theft prevention standard. Extending the theft prevention standard to all passenger cars and MPVs will require these manufacturers to comply with the standard for the first time.

There are fixed costs associated with parts marking. With large vehicle manufacturers, these fixed costs are spread out over such large numbers of vehicles as to be insignificant. However, with small vehicle manufacturers, these fixed costs would be spread out over a much smaller number of vehicles.

The agency estimates that the total costs for any vehicle manufacturer that makes fewer than 373 vehicles for sale in the U.S. per year would exceed the statutory limit of $24.86 per vehicle. Thus, the agency is proposing to exclude small volume manufacturers, i.e., those who make fewer than 500 vehicles for sale in the U.S. each year, from the expansion of the theft prevention standard proposed in this document.

The agency requests comment on this issue.

## V. Costs and Benefits

Following is a summary of the estimated costs and benefits associated with this proposed rule. For a more detailed analysis, see the agency's Preliminary Regulatory Evaluation (PRE). A copy of the PRE has been placed in the docket.

*A. Costs*

NHTSA estimates that the cost of parts marking in 2000 dollars is $6.03 per vehicle. The agency estimates that the proposed rule would subject an additional 3.25 million vehicles per year[37] to the parts marking requirements. Thus, the total annual cost would be $19.6 million (3.25 million vehicles × $6.03 per vehicle).

In addition, the agency notes that each replacement part for a part required to be marked must be marked with the manufacturer's registered trademark, or some other unique identifier, and the letter ''R.'' Under this proposal, the parts of 3.25 million additional vehicles would have to be marked. NHTSA does not know the number of replacement parts sold each year for 3.25 million vehicles. However, the agency estimates the cost of marking a replacement part to be $0.50 per part.

*B. Benefits*

In calendar year 2000, there were 1,165,559 reported stolen vehicles with an average value of $6,682; thus, the total value of vehicles stolen was almost $7.8 billion.[38] The value of unrecovered passenger cars and light duty trucks subject to the parts marking requirements was $2.756 billion. NHTSA estimates that 22 percent of vehicle thefts are of vehicles that are not being marked currently but would be required to be marked under this proposed rule. The agency estimates that the proposed rule would result in a 6.4 percent reduction in the economic loss for unrecovered thefts. Thus, the agency estimates that the value of thefts that could be reduced by this proposal is $38.8 million ($2.756 billion × 22 percent × 6.4 percent).

## VI. Rulemaking Analyses and Notices

*A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

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[32] NHTSA's regulations implementing the statute are located at 49 CFR Part 543, Exemptions from Vehicle Theft Prevention Standard.

[33] 49 U.S.C. 33103(c).

[34] 49 U.S.C. 33103(d).

[35] 49 U.S.C. 33103(d)(1)(B).

[36] As noted above, the initial review was submitted to NHTSA on July 21, 2000.

[37] This includes the agency's estimate of the light duty truck lines that would have to be marked because they have major parts that are interchangeable with a majority of the covered major parts of a MPV line.

[38] Federal Bureau of Investigation, ''Crime in the United States, 2000,'' pp. 53 and 286. This report can be found on the FBI website at *http://www.fbi.gov/ucr/ucr.htm.*

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

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

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

This rulemaking document was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT's Regulatory Policies and Procedures. However, the agency has prepared a Preliminary Regulatory Evaluation (PRE) for this proposed rule. A copy of the PRE has been placed in the docket.

This mandated regulatory action would extend the parts marking requirements to all passenger cars and multipurpose passenger vehicles (but not light duty trucks) with a GVWR of 6,000 pounds or less. The agency estimates that this regulatory action would extend the parts marking requirements to approximately 3.25 million vehicles each year, and the replacement parts for those vehicles. The agency estimates that the cost of parts marking is $6.03 per vehicle (in 2000 dollars). Thus, the annual cost would be $19.6 million.

The agency also estimates that the cost of marking replacement parts is $0.50 per part. The agency does not know how many replacement parts are sold each year for 3.25 million vehicles. However, since the cost of marking replacement parts is only $0.50, the agency does not believe that the total cost of marking replacement parts would be substantial. Thus, the agency tentatively concludes that this regulatory action would have less than a $100 million annual effect on the economy.

*B. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's (SBA) regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effect of this proposed rule under the Regulatory Flexibility Act. As noted above, this proposed rule would extend the parts marking requirements to approximately 3.25 million additional vehicles per year, and to the replacement parts for those vehicles. This proposed requirement would affect manufacturers of vehicles and replacement parts.

As noted above, the agency is proposing to exclude manufacturers that make fewer than 500 vehicles for sale in the U.S. each year from the theft prevention standard.

The agency has no information on the number of small manufacturers of replacement parts. However, since NHTSA estimates that the cost of marking replacement parts is only $0.50 per part, the agency believes that this proposed rule would not have a significant impact on these manufacturers.

Based on this analysis, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

*C. National Environmental Policy Act*

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this proposed rule would not have any significant impact on the quality of the human environment.

*D. Executive Order 13132 (Federalism)*

Executive Order 13132 requires NHTSA 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, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with 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.

The agency has analyzed this proposed rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposal would not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

*E. Civil Justice Reform*

This proposed amendment would not have any retroactive effect. Under 49 U.S.C. 33118, whenever a Federal motor vehicle theft prevention standard is in effect, a State or political subdivision of a State may not adopt or maintain a different theft prevention standard for a motor vehicle or replacement part. 49 U.S.C. 32909 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle theft prevention standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

*F. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The current parts marking requirements in 49 CFR part 541 are considered a ''collection of information,'' as that term is defined by OMB in 5 CFR part 1320. The OMB control number for those information collection requirements is 2127–0510. If adopted, this proposed rule would expand the parts marking requirements in 49 CFR part 541 to all passenger cars and multipurpose passenger vehicle lines with a GVWR of 6,000 pounds or

less, and low theft light duty truck lines with major parts that are interchangeable with a majority of the covered major parts of multipurpose passenger vehicle lines.

NHTSA has determined that, if made final, this proposed rule would impose new collection of information burdens within the meaning of the Paperwork Reduction Act of 1995 (PRA). Under the PRA, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB=s regulations, (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) how to enhance the quality, utility, and clarity of the information to be collected; and

(iv) how 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, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the collection of information proposed in this notice of proposed rulemaking. Interested persons may obtain a copy of the draft justification statement by contacting Walter Culbreath, NHTSA Information Collection Clearance Officer at (202) 366–1566. A copy of the draft justification statement will also be available at the docket number cited in the heading of this notice. Comments must be received on or before August 26, 2002.

**Consolidated Labeling Requirements for 49 CFR parts 565, 541, and 567**

*Type of Request:* Revision of a currently approved clearance.

*OMB Clearance Number:* 2127–0510.

*Form Number:* This proposed collection of information would not use any standard forms.

*Requested Expiration Date of Approval:* Three years from the date of approval of the collection.

*Summary of the Collection of Information:* Pursuant to a statutory mandate, NHTSA proposes that the Federal Motor Vehicle Theft Prevention Standard, which presently requires specified parts of high-theft vehicles to be marked with vehicle identification numbers (VINs), be extended to include all passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less, and to light duty trucks with major parts that are interchangeable with a majority of the covered major parts of multipurpose passenger vehicles.

*Description of the Need for the Information and Proposed Use of the Information:* The identification of major parts (such as the engine, transmission, fenders, doors) of motor vehicle lines is designed to decrease automobile theft by making it more difficult for criminals to ''chop'' vehicles into component parts and then fence such parts. The parts marking information aids law enforcement officials at all levels of government in the investigation of ''chop shops'' by creating evidence for prosecution of the operators for the possession of stolen motor vehicle parts.

If the information were not available, the legislative goal of a comprehensive scheme against automobile theft would be frustrated. The Theft Prevention Standard would not effectively deter ''chop shop'' operators because law enforcement officials could not readily identify parts in the operators' possession as stolen. Also, without parts marking, when stolen parts are recovered, the parts could not be easily traced back to the owner and returned to the owner or insurer.

*Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information:* NHTSA estimates 30 single and multi-stage motor vehicle manufacturers (manufacturers of passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less, and of light duty trucks with major parts that are interchangeable with a majority of the covered major parts of multipurpose passenger vehicles) would be affected by this proposed collection of information. Each manufacturer would be required to mark the 14 major parts of the motor vehicle it manufactures once, at the time the motor vehicle is manufactured.

*Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information:* The total annual reporting burden on motor vehicle manufacturers is estimated as follows:

*Estimate of Number of Affected Vehicles:* At present, 9.3 million vehicles are high theft lines whose parts must be marked. If this proposed rule is made final, an additional 3.25 million vehicles would have their major parts marked, making a total of 12.55 million cars to be marked.

*Estimates of Burden Hours:* The cost of labeling the major parts (i.e., a paper label with the VIN is placed on each major part) is less than the cost of stamping the VIN on each major part with a stamping machine. To meet the Theft Prevention Standard, the agency estimates that the time to number and affix each label to a major part is .2 minutes. Thus, the time required to label each vehicle is approximately 2.8 minutes (14 parts × .2 minutes). The additional hourly burden for labeling that would result if this proposed rule is made final is estimated to be 151,666 hours (3.25 million cars × 2.8 minutes per car/60 minutes in an hour). This figure of 151,666 hours would be added to the existing 456,212 hours resulting from the costs of marking high theft lines. If this proposed rule is made final, the hourly burden for labeling all affected motor vehicles would be 607,878 hours.

*Estimates of Cost Burden:* The agency estimates that the average cost in Year 2000 dollars (the latest year for which figures are available) to label the 14 parts is $6.03 per vehicle, broken down into $3.14 for material and $2.89 for labor. At present, 9.3 million high theft motor vehicles annually must have their major parts marked. At present, the total annual fleet costs are estimated at $56.08 million for label identifiers ($6.03 × 9.3 million vehicles). If this proposed rule is made final, the additional annual cost burden to industry is estimated at $19.6 million ($6.03 × 3.25 million vehicles). If this proposed rule is made final, the cost of labeling all affected motor vehicles would be $75.68 million.

*Reductions in Hours and Cost Burdens in Other Theft Program Collections:* NHTSA also has a clearance to collect information pursuant to 49 CFR part 542, *Procedures for Selecting Lines to be Covered Under the Theft Prevention Standard* (OMB Clearance No. 5157–0539) for 640 burden hours, and 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard* (OMB Clearance No. 5157–0542) for 64 burden hours.

If this proposed rule is made final, the part 542 procedure for manufacturers to make high theft/low theft

determinations of new passenger car and multipurpose passenger vehicle lines, and part 543 procedure for exemptions from parts marking for high theft passenger car and multipurpose passenger car lines would no longer be applicable. Part 542 and 543 procedures would then apply only to light trucks. NHTSA estimates that light trucks make up at most 25 percent of total new passenger car, multipurpose passenger vehicle, and light truck sales. For Theft Prevention Standard purposes, sport utility vehicles for the most part are classified as multipurpose passenger vehicles, because they are designed to carry passengers (See 49 CFR 541.4(5)).

Thus, NHTSA estimates that if this proposed rule is made final, the collection of information burden associated with part 542 would be reduced by 75 percent (since new passenger cars and multipurpose passenger vehicles would be excluded), and would decline from 640 hours to 160 hours. NHTSA estimates that if this proposed rule is made final, the collection of information burden associated with part 543 would be reduced by 75 percent, and would decline from 64 hours to 26 hours.

*G. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

There are no applicable voluntary consensus standards available at this time.

*H. Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

If adopted, this proposed rule would not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

*I. Plain Language*

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Has the agency organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could the agency improve clarity by adding tables, lists, or diagrams?
—What else could the agency do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

*J. Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

**Comments**

*How do I prepare and submit comments?*

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

You may also submit your comments to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov*. Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

*How can I be sure that my comments were received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

*How do I submit confidential business information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

*Will the agency consider late comments?*

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the agency will also consider comments that Docket Management receives after that

date. If Docket Management receives a comment too late for the agency to consider it in developing a final rule (assuming that one is issued), the agency will consider that comment as an informal suggestion for future rulemaking action.

*How can I read the comments submitted by other people?*

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

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

2. On that page, click on ''search.''

3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the Docket for new material.

**List of Subjects**

*49 CFR Part 541*

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

*49 CFR Part 542*

Administrative practice and procedure, National Highway Traffic Safety Administration, Reporting requirements.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Chapter V as follows:

## PART 541—FEDERAL MOTOR VEHICLE THEFT PREVENTION STANDARD

1. The authority citation for part 541 would continue to read as follows:

**Authority:** 49 U.S.C. 33101, 33102, 33103, 33105; delegation of authority at 49 CFR 1.50.

2. Section 541.3 would be revised to read as follows:

### § 541.3 Application.

This standard applies to the following:

(a) Passenger motor vehicle parts identified in § 541.5(a) that are present:

(1) In passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less; and

(2) In light duty trucks that NHTSA has finally determined, pursuant to 49 CFR part 542, to be high theft based on the 1990/91 median theft rate.

(b) Replacement parts for passenger motor vehicles described in § 541.3(a)(1) and (2), if the part is identified in § 541.5(a).

(c) This standard does not apply to passenger motor vehicle parts that are present in passenger cars, multipurpose passenger vehicles, and light duty trucks manufactured by a motor vehicle manufacturer that manufactures fewer than 500 vehicles for sale in the United States each year.

**Appendix A to Part 541 [Removed]**

3. Appendix A to Part 541—Lines Subject to the Requirements of This Standard would be removed.

4. Section 541.5 would be amended by revising the first sentence of paragraph (e)(2) as follows:

### § 541.5 Requirements for passenger motor vehicles.

* * * * *

(e) * * *

(2) Each manufacturer subject to paragraph (e)(1) of this section shall, not later than 30 days before the line is introduced into commerce, inform NHTSA in writing of the target areas designated for each line subject to this standard. * * *

* * * * *

## PART 542—PROCEDURES FOR SELECTING LINES TO BE COVERED BY THE THEFT PREVENTION STANDARD

5. The authority citation for part 542 would continue to read as follows:

**Authority:** 15 U.S.C. 2021, 2022, and 2023; delegation of authority at 49 CFR 1.50.

6. Section 542.3 would be added to read as follows:

### § 542.3 Procedures for selecting low theft light duty truck lines with a majority of major parts interchangeable with those of a multipurpose passenger vehicle line.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and NHTSA to follow in the determination of whether any light duty truck lines that have or are likely to have a low theft rate have major parts interchangeable with a majority of the covered major parts of a multipurpose passenger vehicle line.

(b) *Application.* These procedures apply to:

(1) Each manufacturer that produces—

(i) At least one multipurpose passenger vehicle line that has been or will be introduced into commerce in the United States, and

(ii) At least one light duty truck line that has been or will be introduced into commerce in the United States and that the manufacturer identifies as likely to have a theft rate below the median theft rate; and

(2) Each of those likely submedian theft rate light duty truck lines.

(c) *Procedures.* (1) For each light duty truck line that a manufacturer identifies under appendix C of part 541 of this chapter as having or likely to have a theft rate below the median rate, the manufacturer identifies how many and which of the major parts of that line will be interchangeable with the covered major parts of any of its multipurpose passenger vehicle lines.

(2) If the manufacturer concludes that a light duty truck line that has or is likely to have a theft rate below the median theft rate has major parts that are interchangeable with a majority of the covered major parts of a multipurpose passenger vehicle line, the manufacturer determines whether all the vehicles of those lines with submedian or likely submedian theft rates and interchangeable parts will account for more than 90 percent of the total annual production of all of the manufacturer's lines with those interchangeable parts.

(3) The manufacturer submits its evaluations and conclusions made under paragraphs (c)(1) and (2) of this section, together with the underlying factual information, to NHTSA not less than 15 months before the date of introduction. During this period, the manufacturer may request a meeting with the agency to further explain the bases for its evaluations and conclusions.

(4) Within 90 days after its receipt of the manufacturer's submission under paragraph (c)(3) of this section, NHTSA considers that submission, if any, and

independently makes, on a preliminary basis, the determinations of those light duty truck lines with submedian or likely submedian theft rates which should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's preliminary determinations, together with the factual information considered by the agency in making them.

(5) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(4) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(4) of this section informing it of the agency's evaluations and preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30-day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(6) Each of the agency's preliminary determinations made under paragraph (c)(4) of this section becomes final 45 days after the agency sends the letter specified in that paragraph unless a request for reconsideration has been received in accordance with paragraph (c)(5) of this section. If such a request has been received, the agency makes its final determinations within 60 days of its receipt of the request. NHTSA informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

Issued: June 18, 2002.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 02–15903 Filed 6–25–02; 8:45 am]

BILLING CODE 4910–59–P

# Notices

Federal Register
Vol. 67, No. 123
Wednesday, June 26, 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

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request—Form FNS–209, Status of Claims Against Households

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. Sections 11, 13, and 16 of the Food Stamp Act of 1977 (the Act) are the bases for the information collected on Form FNS–209, Status of Claims Against Households. Section 11 of the Act requires that State agencies submit reports and other information that are necessary to determine compliance with the Act and its implementing regulations. Section 13 of the Act requires State agencies to establish claims and collect overpayments to households. Section 16 of the Act authorizes State agencies to retain a portion of what is collected. The FNS–209 is used as the mechanism for State agencies to report the claim establishment, collection and retention amounts.

**DATES:** Written comments must be submitted on or before August 26, 2002, to be assured consideration.

**ADDRESSES:** Send comments to Barbara Hallman, Chief, State Administration Branch, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302.

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 will have practical utility; (b) 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; (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 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.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Leslie C. Byrd, (703) 305–2472.

**SUPPLEMENTARY INFORMATION:**

*Title:* Status of Claims Against Households.

*OMB Number:* 0584–0069.

*Form Number:* FNS–209.

*Expiration Date:* May 31, 2003.

*Type of Request:* Extension of a currently approved collection with no change in burden hours.

*Abstract:* The Food Stamp Program regulations at 7 CFR 273.18 require that State agencies establish, collect and efficiently manage food stamp recipient claims. Section 273.18(m)(5) requires State agencies to submit at the end of every quarter the completed Form FNS–209, Status of Claims Against Households. The information required for the FNS–209 report is obtained from a State accounting system responsible for establishing claims, sending demand letters, collecting claims, and managing other claim activity. In general, State agencies must report the following information on the FNS–209: the current outstanding aggregate claim balance; claims established; collections; any balance and collection adjustments; and the amount to be retained for collecting non-agency error claims. The burden associated with establishing claims (demand letters) and the Treasury Offset Program, both of which are also used to complete the FNS–209, are already approved under OMB burden numbers 0584–0492 and 0584–0446 respectively.

The estimated annual burden is 742 hours. This is the same as the currently approved burden. This estimate includes the time it takes each State agency to accumulate and tabulate the data necessary to complete the report four times per year.

*Affected Public:* State Agencies.

*Estimated Number of Respondents:* 53.

*Number of Responses Per Respondent:* 4.

*Total Responses:* 212.

*Estimated Time per Response:* 3 hours.

*Reporting Burden:* 636.

*Total Number of Record Keepers:* 53.

*Estimated Annual hours per Record Keeper:* 2.

*Record Keeping Burden:* 106.

*Estimated Total Annual Burden:* 742 hours.

Dated: June 14, 2002.

**Eric M. Bost,**

*Under Secretary, Food, Nutrition, and Consumer Services.*

[FR Doc. 02–16102 Filed 6–25–02; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Flathead County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Flathead County Resource Advisory Committee will meet in Kalispell, Montana July 16 and July 29. The purpose of the meeting is to discuss potential Title II projects for fiscal year 2003 funded by the Secure Rural Schools and Community Self Determination Act.

**DATES:** The meetings will be held July 16 from 3 pm until 6 pm. and July 29 from 3 pm until 6 pm.

**ADDRESSES:** The meeting will be held at the Flathead National Forest Supervisors Office, Conference Rooms A & B, 1935 Third Ave East, Kalispell, Montana, 59901.

**FOR FURTHER INFORMATION CONTACT:** Allen Rowley, Flathead National Forest Public Affairs Specialist, (406) 758–5252.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. These are the first two meetings of the Flathead County Resource Advisory Committee. Time will be allocated for public input

on potential projects the committee may be discussing.

**Allen Rowley,**

*Public Affairs Specialist.*

[FR Doc. 02–16128 Filed 6–25–02; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Institute of Standards and Technology (NIST).

*Title:* Malcolm Baldrige National Quality Award Application.

*Form Number(s):* None.

*OMB Approval Number:* 0693–0006.

*Type of Request:* Regular submission.

*Burden Hours:* 10,000.

*Number of Respondents:* 100.

*Average Hours Per Response:* 100.

*Needs and Uses:* Information and quantitative data collected from the Award Applications is used as the basis for a rigorous evaluation of each applicant by Baldrige Examiners to determine the applicant's quality achievements and quality improvements and to determine which, if any, company or organization will receive the Award.

*Affected Public:* Business or other for-profit organizations, not-for profit institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 20, 2002.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 02–16046 Filed 6–25–02; 8:45 am]

BILLING CODE 3510–13–P

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Comprehensive Economic Development Strategy—Request for Comments

**ACTION:** Proposed collection: comment request.

**SUMMARY:** The Department of Commerce as part of its continuing effort to reduce paperwork and respondent burden invites the general public and other Federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1994, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before August 26, 2002.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington DC 20230 or via Internet at *MClayton@doc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instruments and instructions should be directed to Patricia Flynn, Director, Operations Review and Analysis Division, Economic Development Administration, Room 7015, Washington, DC 20230, telephone 202–482–5353.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The Economic Development Administration (EDA) helps our partners across the nation (states, regions, and communities) create wealth and minimize poverty by promoting a favorable business environment to attract private capital investment and jobs through world-class capacity building, planning, infrastructure, research grants, and strategic initiatives.

The Comprehensive Economic Development Strategy (CEDS) is needed by EDA to ensure that areas served by an EDA-supported planning organization have or are developing a continuous community-based planning process and have thoroughly thought out what type of economic development is needed in the area. The process addresses both the assets of the area in terms of natural resources, labor skills, educational and research facilities, transportation, infrastructure, financial resources, proximity to major economic hubs, or any other positive influences that can be identified, and also the liabilities of the area in terms of unemployment, underemployment, low incomes, threatened closure of industry or other employment centers, out-migration, denigration of natural resources or other negatives. The CEDS process is designed to bring about consensus on long-term goals and specific activities to reach those goals with the overall purpose of alleviating economic decline and in fact, developing an environment conducive to economic development.

#### II. Method of Collection

This information is required under the Public Works and Economic Development Act of 1965, as amended, including the comprehensive amendments by the Economic Development Administration Reform Act of 1998, Public Law 105–393, (PWEDA). The information is used by EDA to determine: if statutory requirements are met on eligibility for projects for public works and economic adjustment (except for strategy/planning); district designation requirements; and if planning requirements are met. The CEDS has been revised to include EDA's Investment Policy Guidelines which are intended to further define the criteria used to evaluate proposals for EDA funding which are provided at 13 CFR 304.2.

#### III. Data

*OMB Number(s)* 0610–0093.

*Form Number:* Not Applicable.

*Burden:* 33,150.

*Type of Review:* Extension of currently approved collection.

*Affected Public:* EDA-funded grantees: State, local and tribal governments; community organizations; and not-for-profit organizations.

*Estimated Number of Respondents:* Approximately 640.

*Estimated Time per Response:* (1) Initial CEDS for Districts and other EDA-supported Planning Organizations—240 hours; (2) CEDS Document for non-Districts and non-EDA supported organizations—25 hours; (3) Annual CEDS Report—50 hours; and (4) CEDS Update—75 hours.

*Estimated Total Annual Burden Hours:* 33,150 hours.

*Estimate Total Annual Cost:* $1,344,000.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the

agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the equality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 20, 2002.

**Madeleine G. Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 02–16043 Filed 6–25–02; 8:45 am]

**BILLING CODE 3510–34–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Chemical Weapons Convention Declaration Forms

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before August 26, 2002.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Dove, BIS ICB Liaison, (202) 482–5211, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC, 20230.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The Chemical Weapons Convention (CWC) bans the development, production, acquisition, stockpiling, retention and direct or indirect transfer of chemical weapons. Under the CWC, companies that produce, process, consume, utilize, or transfer certain chemicals must file initial and annual declarations. This information will be submitted to the Organization for the prohibition of Chemical Weapons (OPCW), the treaty's international body. The collection of this information is required to comply with the treaty.

**II. Method of Collection**

Submitted on BXA Declaration forms.

**III. Data**

*OMB Number:* 0694–0091.

*Form Number:* Form 1–1 Schedule 1 Facility or Trading Company Identification; Form 1–2 Declaration on Schedule 1 Chemical Activities at the Facility During the Previous Year; Form 2–1 Schedule 2 Plant Site or Trading Company Identification, *et al.*

*Type of Review:* Regular submission.

*Affected Public:* Individuals, businesses or other for-profit and not-for-profit institutions, federal government.

*Estimated Number of Respondents:* 792.

*Estimated Time Per Response:* 10 minutes—31 hours per response.

*Estimated Total Annual Burden Hours:* 27,020.

*Estimated Total Annual Cost:* $43,732.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: June 20, 2002.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 02–16042 Filed 6–25–02; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Proposed Information Collection; Comment Request; Surveys, Focus Groups, and Other Customer Service Data Collections

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before August 26, 2002.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 1401 Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *mclayton@doc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Phyllis Boyd, National Institute of Standards and Technology, 100 Bureau Drive, Stop 3220, Gaithersburg, MD, 20899–3220, (301) 975–4062.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

In accordance with Executive Order 12862, the National Institute of Standards and Technology (NIST), a non-regulatory agency of the Department of Commerce, proposes to conduct a number of surveys—both quantitative and qualitative. The surveys will be designed to determine the kind and the quality of products, services, and information our key customers want and expect, as well as their satisfaction with and awareness of existing products, services, and information. In addition, NIST proposes other customer service satisfaction data collection that include, but may not be limited to focus groups, reply cards that accompany product distributions, and web-based surveys and dialogue boxes that offer customers the opportunity to express their level of satisfaction with NIST products, services, and information and for ongoing dialogue with NIST. NIST will limit its inquiries to data collections that solicit strictly

voluntary opinions and will not collect information that is required or regulated. No assurances of confidentiality will be given. However, it will be completely optional for survey participants to provide their name or affiliation information if they wish to provide comments for which they elect to receive a response. In addition, NIST will provide no electronic tracking and will set no cookies for web-based customer responses.

**II. Method of Collection**

NIST will collect this information by electronic means, as well as by mail, fax, telephone, and person-to-person interaction.

**III. Data**

*OMB Number:* 0693–0031.
*Form Number:* None.
*Type of Review:* Regular submission.
*Affected Public:* NIST customers, which may include businesses, academic institutions, associations, researchers, and other individuals, organizations, or institutions.
*Estimated Number of Respondents:* 12,000.
*Estimated Time Per Response:* Less than 2 minutes for a response card; 2 hours for focus group participation. The average response time is expected to be less than 30 minutes.
*Estimated Total Annual Burden Hours:* 3,022.
*Estimated Total Annual Cost to the Public:* 0.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They also will become a matter of public record.

Dated: June 20, 2002.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 02–16045 Filed 6–25–02; 8:45 am]

BILLING CODE 3510–13–P

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 10 a.m., Tuesday, July 2, 2002.

**PLACE:** 1155 21st St., NW., Washington, DC, Lobby Level Hearing Room.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

—Customer Margin Rules Relating to Security Futures
—Applicability of CFTC and SEC Customer Protection, Record keeping, Reporting, and Bankruptcy Rules and the Securities Investor Protection Act of 1970 to Accounts Holding Security Futures Products

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 02–16153 Filed 6–21–02; 2:43 pm]

BILLING CODE 6351–01–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Record of Decision (ROD) for the Final Programmatic Environmental Impact Statement (PEIS) on Transportable Treatment Systems for Non-Stockpile Chemical Warfare Materiel

**AGENCY:** Department of the Army, Department of Defense.

**ACTION:** Notice of Availability.

**SUMMARY:** This ROD has been prepared by the Department of the Army in compliance with the National Environmental Policy Act of 1969, President's Council on Environmental Quality regulation (40 CFR 1500–1508), and Army Regulation 200–2. This decision is based on the analyses contained in the February 2001 Final PEIS on Transportable Treatment Systems for Non-Stockpile Chemical Warfare Materiel, the associated public and other input received in response to coordination of this document, and other considerations. The primary decisions reached in the ROD on transportable treatment systems are to: (1) Proceed with development and testing of the Rapid Response System and the Explosive Destruction System and make these systems available for deployment and (2) suspend further development and testing of the Munitions Management Device Versions One and Two (based on current program needs),; however, the Munitions Management Device technologies were determined to be environmentally safe and subsystems could be used in the future.

**ADDRESSES:** Questions on the ROD or requests for copies of the document should be directed to: Program Manager for Chemical Demilitarization, ATTN: SFAE–CD–NP (Mr. John Gieseking/ Programmatic Environmental Impact Statement), Aberdeen Proving Ground, Maryland 21010–4005 or via e-mail at *john.gieseking@pmcd.apgea.army.mil.*

**FOR FURTHER INFORMATION CONTACT:** Mr. John Gieseking at (410) 436–3768 or by fax at (410) 436–8737.

**SUPPLEMENTARY INFORMATION:** The PEIS was used to help the Army make this program-level decision with input from the public. The Army's Product Manager for Non-Stockpile Chemical Materiel has analyzed the potential environmental and socioeconomic consequences of two alternative courses of action in the Final PEIS with Respect to the Army's chemical demilitarization responsibilities. These alternatives are: (1) Completing development and testing of the transportable chemical treatment systems and making them available to be used where needed and appropriate to process non-stockpile chemical warfare materiel and (2) the no-action alternative, under which the Army would discontinue the development of the transportable treatment systems and continue to store non-stockpile chemical warfare materiel until other suitable technologies are developed.

Copies of the ROD can also be obtained by calling Ms. Louise Dyson, Public outreach and Information Office, Office of the Program Manager for Chemical Demilitarization, at 1–800–488–0648 or (410) 436–3445; fax (410) 436–8737; or e-mail at *louise.dyson@pmcd.apgea.army.mil.* The ROD, as well as the Final PEIS, may be accessed at the following web site: *http://www-pmcd.apgea.army.mil.*

Dated: June 18, 2002.

**Raymond J. Fatz,**

*Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA(I&E).*

[FR Doc. 02–16092 Filed 6–25–02; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** An emergency review has been requested in accordance with the Act (44 U.S.C. chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by July 12, 2002.

**ADDRESSES:** Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: June 20, 2002.

**John Tressler,**

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

**Office of Elementary and Secondary Education**

*Type of Review:* Revision of a currently approved collection.

*Title:* Indian Education Discretionary Grant Applications (KI).

*Abstract:* Application for funding for Indian Education discretionary programs of Demonstration Grants for Indian Children and Professional Development. The information is used to determine applicant eligibility and amount of awards for projects selected for funding.

**Additional Information**

An emergency clearance is necessary to enable the Department to allow potential grantees the opportunity to apply for funding this fiscal year under these discretionary grant programs and begin funded programs early in the coming school year. The regulations for the program are being published as a final rule with request for comments. This allows the Department to implement the programs without delay, but still provides the public with an opportunity to comment on the regulatory provisions. A delay in the clearance of these information collection requirements will mean that the program will be unable to make awards this year and funds would lapse. Further the selected funded projects will be unable to recruit the most qualified staff or training participants and successfully begin implementation of their programs early in the 2002–03 school year. In our view harm to the public would occur if this clearance is not approved.

Although OMB will provide provisional clearance of this information collection in order to get awards out this year, the public will have another chance to comment on the information collection requirements of the final rule when the final regulation is published in mid-July, 2002.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs (primary).

*Reporting and Recordkeeping Hour Burden:*

Responses: 100.

Burden Hours: 5840.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2052. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Katrina Ingalls at her internet address *Katrina.Ingalls@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–16066 Filed 6–25–02; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–301–050]**

### ANR Pipeline Company; Notice of Compliance Filing

June 20, 2002.

Take notice that on June 14, 2002, ANR Pipeline Company (ANR) filed amendments to three service agreements between ANR and Baltimore Gas & Electric Company in compliance with the Commission?s May 16, 2002 Letter Order in Docket No. RP99–301–038. *ANR Pipeline Company,* 99 FERC ¶ 61,174 (2002).

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.

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

*Deputy Secretary.*

[FR Doc. 02–16122 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. RP00–387–002 and RP00–583–003]**

## Florida Gas Transmission Company; Notice of Compliance Filing

June 20, 2002.

Take notice that on June 17, 2002, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Fifth Revised Sheet No. 119
Fifth Revised Sheet No. 120A
Original Sheet No. 135B
Fourth Revised Sheet No. 162
Fifth Revised Sheet No. 165A
Sixth Revised Sheet No. 166
First Revised Sheet No. 166A
Fifth Revised Sheet No. 167
Third Revised Sheet No. 175

FGT states On February 9, 2000, the Commission issued its final rule regarding the regulation of interstate natural gas transportation services in Docket Nos. RM98–10–000 and RM98–12–000 (Order No. 637). Among other things, Order No. 637 required pipelines to demonstrate compliance or make conforming tariff changes related to scheduling equality, released capacity, capacity segmentation, pipeline imbalance services, operational flow orders (OFOs) and penalties. The Commission further clarified these requirements in Order Nos. 637–A and 637–B.

On July 14, 2000, FGT submitted pro forma tariff sheets proposing changes to comply with Order No. 637 (July 14, 2000 Filing). Subsequently, on May 16, 2002 the Commission issued its order on FGT's July 14, 2000 Filing. The May 16 Order accepted FGT's proposal on several issues while requiring FGT to make tariff revisions and to file actual tariff sheets within thirty (30) days consistent with the discussion in such order. Additionally, the May 16 Order directed that such tariff sheets not be placed into effect before further order of the Commission.

FGT states that in the instant filing, FGT addresses each of the Commission's directives and is proposing corresponding tariff changes. However, FGT requests that the Commission defer acting on certain tariff sheets related to issues for which FGT has requested rehearing. With respect to those tariff sheets, FGT reserves the right to propose modifications to the tariff provisions proposed herein as a result of future Commission orders resulting from FGT's Request for Rehearing and Clarification of the Commission's May 16 Order. In addition, FGT reserves the right to propose modifications to these tariff sheets as a result of Commission orders which are a result of underlying challenges to Order No. 637 in Interstate Natural Gas Association of America v. F.E.R.C., No. 98–1333, et al., 2002 WL 506850 (D.C. Cir. April 5, 2002).

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.

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

*Deputy Secretary.*

[FR Doc. 02–16123 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP02–232–001]**

## Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

June 20, 2002.

Take notice that on June 17, 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:

Substitute Seventh Revised Sheet No. 45
Second Revised Sheet No. 45A
Substitute First Revised Sheet No. 55A
Substitute First Revised Sheet No. 57I

Great Lakes states that these tariff sheets are being filed to add clarifying language to its tariff sheets as directed in the Commission's May 31, 2002 Letter Order in Docket No. RP02–232–000, wherein Great Lakes had 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 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.

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

*Deputy Secretary.*

[FR Doc. 02–16127 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP02–151–003]**

## Gulf South Pipeline Company, LP; Notice of Compliance Filing

June 20, 2002.

Take notice that on June 18, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet, to become effective February 25, 2002.

Second Sub. Second Revised Sheet No. 306

Gulf South states that the above tariff sheet has been filed to comply with the Order issued June 3, 2002, 99 FERC ¶61,256. The Commission directed Gulf South to provide that the effective date of a contract demand reduction to be the latter of the effective date of the bypass or the end of the 60-day notice period. The compliance filing incorporates this change.

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.

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

*Deputy Secretary.*

[FR Doc. 02–16126 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–81–013]**

## Kinder Morgan Interstate Gas Transmission LLC; Notice of Negotiated Rate Tariff Filing

June 20, 2002.

Take notice that on June 18, 2002, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A, Eighth Revised Sheet No. 4G and Second Revised Sheet No. 4J, to be effective July 1, 2002.

KMIGT states that the above-referenced tariff sheets reflect a negotiated rate contract effective July 1, 2002. The tariff sheets are being filed pursuant to Section 36 of KMIGT's FERC Gas Tariff Fourth Revised Volume No. 1–B, and the procedures prescribed by the Commission in its December 31, 1996 ''Order Accepting Tariff Filing Subject to Conditions'', in Docket No. RP97–81 (77 FERC ¶ 61,350) and the Commission's Letter Orders dated March 28, 1997 and November 30, 2000 in Docket Nos. RP97–81–001, and RP01–70–000, respectively.

KMIGT states that a copy of this filing has been served upon all parties to this proceeding, KMIGT's customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, 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. 02–16120 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–399–008]**

## National Fuel Gas Supply Corporation; Notice of Compliance Filing

June 20, 2002.

Take notice that on June 14, 2002, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing.

National Fuel states that the purpose of the instant filing is to comply with the requirements of Order No. 637 concerning segmentation and on-the-path secondary priority. National Fuel?s filing indicates that the tariff sheets implementing all other requirements of Order No. 637 are already in effect.

National Fuel states that copies of this filing were served upon its customers, interested state commissions and the parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, 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.

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

*Deputy Secretary.*

[FR Doc. 02–16124 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP02–383–000]**

### National Fuel Gas Supply Corporation; Notice of Application

June 19, 2002.

Take notice that on June 7, 2002, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP02–383–000 an application pursuant to Sections 7(b) and (c) of the Natural Gas Act (NGA) for authorization to abandon certain pipeline facilities in New York, and for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline replacement facilities in New York, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (call (202) 208–2222 for assistance).

National Fuel proposes to abandon approximately 5.44 miles of 10-inch steel pipeline in Allegany County, New York, and to abandon approximately 27.35 miles of pipeline, also in Allegany County, New York, both segments of its Line PY–10. It is stated that the pipeline facilities would be abandoned in place except for those sections where the landowner specifically requests National Fuel to remove the pipe. National Fuel proposes to construct and operate approximately 5.44 miles of 8-inch plastic pipeline to replace the 5.44 miles being abandoned, with the new pipeline located in a new trench adjacent to the existing pipeline. It is stated that a portion of the new line will be located in a new right-of-way to avoid a house that has been constructed on the right-of-way. It is asserted that this portion of the line will be located 75 west of the existing line. National Fuel explains that the reason for the abandonment and replacement is that the existing line has deteriorated, and the cost of upgrading it would be substantial. The cost of the new construction is estimated at $1.1 million, and the cost of abandonment is estimated at approximately $505,607.

Any questions regarding this amendment should be directed to David N. Reitz, Assistant General Counsel, National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, New York 14203, at (716) 857–7949.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before July 10, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–16149 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–317–005]**

### Reliant Energy Gas Transmission Company; Notice of Compliance Filing

June 20, 2002.

Take notice that on June 14, 2002, Reliant Energy Gas Transmission Company (REGT) tendered for filing its report of activities during the first year of service under Rate Schedule PHS.

REGT states that copies of the filing have been mailed to each of REGT's customers and interested state commissions.

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.

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

*Deputy Secretary.*

[FR Doc. 02–16125 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP96–312–073]**

## Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

June 20, 2002.

Take notice that on June 4, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Ocean State Power II. Tennessee requests that the Commission grant such approval effective July 1, 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.

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

*Deputy Secretary.*

[FR Doc. 02–16117 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP96–312–073]**

## Tennessee Gas Pipeline Company; Notice of Negotiated Rates

June 20, 2002.

Take notice that on June 6, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing an amended service agreement to replace an incorrect service agreement that was filed on June 4, 2002 as part of a May 31, 2002, Negotiated Rate Arrangement with Ocean State Power II.

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. 02–16118 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP96–312–074]**

## Tennessee Gas Pipeline Company; Notice of Errata Filing

June 20, 2002.

Take notice that on June 6, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing an amended service agreement to replace an incorrect service agreement that was filed on June 4, 2002 as part of a May 31, 2002 Negotiated Rate Arrangement with Ocean State Power.

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.

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

*Deputy Secretary.*

[FR Doc. 02–16119 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–288–021]**

## Transwestern Pipeline Company; Notice of Negotiated Rate Tariff Filing

June 20, 2002.

Take notice that on June 14, 2002, Transwestern Pipeline Company (TW) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective June 15, 2002:

16th Revised Sheet No. 5B.05
7th Revised Sheet No. 5B.06

2nd Revised Sheet No. 5B.10
Original Sheet No. 5B.11
Original Sheet No. 5B.12

TW states that the above sheets are being filed to implement specific negotiated rate agreements with Frito Lay (2), Western Gas Resources, BP Energy Company, United States Gypsum Company, PPL Energy Plus, LLC (2), and OneOK Energy Marketing and Trading Company in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

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. 02–16121 Filed 6–26–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC02–76–000, et al.]**

## Conectiv Bethlehem Inc. et al.; Electric Rate and Corporate Regulation Filings

June 19, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. Conectiv Bethlehem Inc. and Conectiv Energy Holding Company,

[Docket No. EC02–76–000]

Take notice that on June 14, 2002, Conectiv Bethlehem, Inc. (CBI) and Conectiv Energy Holding Company (CEH) (collectively, Applicants) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's regulations, a request for authorization and approval to engage in an internal restructuring whereby CEH transfers to one of its wholly owned subsidiaries all of CEH's shareholder interest CBI.

Copies of the filing were served on the Delaware Public Service Commission.

*Comment Date:* July 8, 2002.

### 2. Cabazon Wind Partners, LLC, Cannon Power Corporation, and Shell WindEnergy Inc.

[Docket No. EC02–77–000]

Take notice that on June 17, 2002, Cabazon Wind Partners, LLC (Cabazon), Cannon Power Corporation (Cannon) and Shell WindEnergy Inc. (Shell WindEnergy) (collectively, the Applicants) filed with the Federal Energy Regulatory Commission (Commission), an application pursuant to Section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Shell WindEnergy will acquire 100% of the membership interests in Cabazon. Cabazon is constructing a 41 MW wind power generating plant (Project) located in Riverside County, California (the Project).

Cabazon is currently wholly-owned by Cannon. Pursuant to an acquisition agreement, the Transaction would be consummated after the Project commences commercial operation, which is expected to occur by August 25, 2002. The Transaction is expected to result in the disposition of Commission jurisdictional facilities consisting of Cabazon's market-based rate tariff and minor interconnection facilities connecting the Project to the California grid. Applicants have requested privileged treatment for the Acquisition Agreement between Cannon and Shell WindEnergy.

*Comment Date:* July 8, 2002.

### 3. Pajaro Energy Center, LLC

[Docket No. EG02–154–000]

Take notice that on June 14, 2002, Pajaro Energy Center, LLC (Pajaro) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Pajaro, a Delaware limited liability company, proposes to own and operate a nominally rated 45 MW natural gas-fired, simple cycle electric generating facility to be located in Monterey County, California. Pajaro intends to sell the output at wholesale to an affiliated marketer.

*Comment Date:* July 10, 2002.

### 4. Rhode Island State Energy Statutory

[Docket No. EG02–155–000]

Take notice that on June 14, 2002, Rhode Island State Energy Statutory Trust 200, c/o State Street Bank and Trust Company of Connecticut, National Association, c/o State Street Bank and Trust Company of Connecticut, National Association, c/o LaFayette, Boston, Massachusetts 02102, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. The applicant is a Connecticut statutory trust that states it will engage directly or indirectly and exclusively in the business of owning and/or operating eligible facilities in the United States and selling electric energy at wholesale. The applicant proposes to own a 535 MW electric generating facility located near Johnston, Rhode Island, The applicant seeks a determination of its exempt wholesale generator status. All electric energy sold by the applicant will be sold exclusively at wholesale by leasing the facility.

*Comment Date:* July 10, 2002.

### 5. Boston Edison Company

[Docket No. ER02–170–002]

Take notice that on June 13, 2002, Boston Edison Company (Boston Edison) tendered for filing a new First Revised Rate Schedule FERC No. 167 in compliance with the directives of the Commission in its Order Denying Rehearing, issued on March 15, 2002, in Docket No. ER02–170–001 98 FERC ¶ 61,292 (2002).

Boston Edison requests that the new First Revised Rate Schedule FERC No. 167 become effective on June 1, 2002.

*Comment Date:* July 5, 2002.

### 6. Virginia Electric and Power Company

[Docket No. ER02–2083–000]

Take notice that Virginia Electric and Power Company (the Company) on June 13, 2002, respectfully tendered for filing the following Service Agreement by Virginia Electric and Power Company to PSEG Energy Resources & Trade LLC

designated as Service Agreement No. 16 under the Company's Wholesale Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 6, effective on June 15, 2000. The Company respectfully requests an effective date of May 14, 2002, as requested by the customer.

Copies of the filing were served upon PSEG Energy Resources & Trade LLC, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

*Comment Date:* July 5, 2002.

**7. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company**

[Docket No. ER02–2087–000]

Take notice that on June 13, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 USC 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with American Electric Power Service Corporation.

Ameren Energy seeks Commission acceptance of these service agreements effective June 1, 2002. Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

*Comment Date:* July 5, 2002.

**8. Bonnie Mine Energy, LLC**

[Docket No. ER02–2088–000]

Take notice that on June 13, 2002, Bonnie Mine Energy, LLC (Bonnie Mine) filed with the Federal Energy Regulatory Commission that FERC Electric Tariff, Original Volume No. 1 in Docket No. ER00–1502–000 on February 3, 2000 is to be cancelled.

*Comment Date:* July 5, 2002.

**9. Dominion Energy Marketing, Inc.**

[Docket No. ER02–2089–000]

Take notice that on June 13, 2002, Dominion Energy Marketing, Inc. (the Company) respectfully tendered for filing the following Service Agreement by Dominion Energy Marketing, Inc. to PSEG Energy Resources & Trade LLC designated as Service Agreement No 3 under the Company's Market-Based Sales Tariff, FERC Electric Tariff, Original Volume No. 1, effective on December 15, 2000.

The Company requests an effective date of May 14, 2002, as requested by the customer. Copies of the filing were served upon the PSEG Energy Resources & Trade LLC, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

*Comment Date:* July 5, 2002.

**10. Duke Electric Transmission**

[Docket No. ER02–2090–000]

Take notice that on June 13, 2002, Duke Electric Transmission (Duke) a division of Duke Energy Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement with Duke Energy Trading and Marketing, L.L.C., for Non-Firm Transmission Service under Duke's Open Access Transmission Tariff. Duke requests that the proposed Service Agreement be permitted to become effective on May 23, 2002. Duke states that this filing is in accordance with Part 35 of the Commission's regulations and that a copy has been served on the North Carolina Utilities Commission.

*Comment Date:* July 5, 2002.

**11. Duke Electric Transmission**

[Docket No. ER02–2091–000]

Take notice that on June 13, 2002, Duke Electric Transmission (Duke) a division of Duke Energy Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement with Dominion Energy Marketing, Inc., for Firm Transmission Service under Duke's Open Access Transmission Tariff. Duke requests that the proposed Service Agreement be permitted to become effective on May 24, 2002. Duke states that this filing is in accordance with Part 35 of the Commission's regulations and that a copy has been served on the North Carolina Utilities Commission.

*Comment Date:* July 5, 2002.

**12. Duke Electric Transmission**

[Docket No. ER02–2092–000]

Take notice that on June 13, 2002, Duke Electric Transmission (Duke) a division of Duke Energy Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement with Western Resources, Inc., dba Westar Energy, for Firm Transmission Service under Duke's Open Access Transmission Tariff. Duke requests that the proposed Service Agreement be permitted to become effective on May 23, 2002. Duke states that this filing is in accordance with Part 35 of the Commission's regulations and that a copy has been served on the North Carolina utilities Commission.

*Comment Date:* July 5, 2002.

**13. Duke Electric Transmission**

[Docket No. ER02–2093–000]

Take notice that on June 13, 2002, Duke Electric Transmission (Duke) a division of Duke Energy Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement with Dominion Energy Marketing, Inc., for Non-Firm Transmission Service under Duke's Open Access Transmission Tariff. Duke requests that the proposed Service Agreement be permitted to become effective on May 23, 2002. Duke states that this filing is in accordance with Part 35 of the Commission's regulations and that a copy has been served on the North Carolina utilities Commission.

*Comment Date:* July 5, 2002.

**14. Duke Electric Transmission**

[Docket No. ER02–2094–000]

Take notice that on June 13, 2002, Duke Electric Transmission (Duke) a division of Duke Energy Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement with Western Resources, Inc., dba Westar Energy, for Non-Firm Transmission Service under Duke's Open Access Transmission Tariff. Duke requests that the proposed Service Agreement be permitted to become effective on May 22, 2002. Duke states that this filing is in accordance with Part 35 of the Commission's regulations and that a copy has been served on the North Carolina utilities Commission.

*Comment Date:* July 5, 2002.

**15. PJM Interconnection, L.L.C.**

[Docket No. ER02–2095–000]

Take notice that on June 13, 2002, PJM Interconnection, L.L.C. (PJM) tendered for filing a revised page to the PJM Open Access Transmission Tariff to correct a subpart reference in Attachment M to such tariff.

Copies of this filing have been served on all PJM members and the state electric utility regulatory commissions in the PJM region.

*Comment Date:* July 5, 2002.

**16. American Transmission Systems, Inc.**

[Docket No. ER02–2096–000]

Take notice that on June 14, 2002, American Transmission Systems, Inc. filed a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for NSP Energy Marketing, the Transmission Customer. Services are being provided under the American

Transmission Systems, Inc. Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER99–2647–000. The proposed effective date under the Service Agreement is June 13, 2002 for the above mentioned Service Agreement in this filing.

*Comment Date:* July 5, 2002.

**17. American Transmission Systems, Inc.**

[Docket No. ER02–2097–000]

Take notice that on June 14, 2002, American Transmission Systems, Inc. filed a Service Agreement to provide Firm Point-to-Point Transmission Service for NSP Energy Marketing, the Transmission Customer. Services are being provided under the American Transmission Systems, Inc. Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER99–2647–000. The proposed effective date under the Service Agreement is June 13, 2002 for the above mentioned Service Agreement in this filing.

*Comment Date:* July 5, 2002.

**18. Progress Energy Inc. On behalf of DeSoto County Generating Company, LLC.**

[Docket No. ER02–2098–000]

Take notice that on June 14, 2002, DeSoto County Generating Company, LLC (DeSoto) tendered for filing an executed Service Agreement between DeSoto and the following eligible buyer, Florida Power & Light Company. Service to this eligible buyer will be in accordance with the terms and conditions of DeSoto's Cost-Based Rates ''Up To'' Tariff, FERC Electric Tariff No. 1.

DeSoto requests an effective date of May 20, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission, the Florida Public Service Commission and the Georgia Public Service Commission.

*Comment Date:* July 5, 2002.

**19. Central Hudson Gas & Electric Corporation**

[Docket No. ER02–2099–000]

Take notice that on June 14, 2002, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing proposed changes in its Rate Schedule FERC No. 202 which sets forth the terms and charges for substation service provided by Central Hudson to Consolidated Edison Company of New York, Inc.

Central Hudson requests waiver on the notice requirements set forth in 18 CFR 35.11 of the Regulations to permit charges to become effective January 1, 2002 as agreed to by the parties.

Central Hudson states that a copy of its filing was served on Con Edison and the State of New York Public Service Commission.

*Comment Date:* July 5, 2002.

**20. PJM Interconnection, L.L.C.**

[Docket No. ER02–2100–000]

Take notice that on June 14, 2002, PJM Interconnection L.L.C. (PJM), tendered for filing two executed umbrella service agreements for firm point-to-point transmission service and non-firm point-to-point transmission service with UBS AG, acting through its London Branch and care of UBS Warburg Energy, LLC (UBS AG).

PJM requested a waiver of the Commission's notice regulations to permit effective date of May 15m 2002 for the agreements, the date that the agreements were executed.

Copies of this filing were served upon UBS AG, as well as the state utility regulatory commissions within the PJM region.

*Comment Date:* July 5, 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–16148 Filed 6–25–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EL02–100–000]**

## Public Utility District No. 1 of Snohomish County, WA, Complainant, v. American Electric Power Service Corporation, as Agent for the Operating Companies of American Electric Power Company, Inc., Respondent; Notice of Complaint

June 19, 2002.

Take notice that on June 18, 2002, Public Utility District No. 1 of Snohomish County, Washington (Snohomish) filed a complaint against American Electric Power Service Corporation (AEP), as agent for the Operating Companies of American Electric Power Company, Inc., concerning a long-term power supply contract executed by AEP with Snohomish in January 2001, when the Western energy markets allegedly were dysfunctional. Snohomish requests that the Commission: (i) revoke AEP's market-based rate authority; and (2) terminate the contract or, in the alternative, reform the price to the $24/MWh historical average in the Pacific Northwest. Snohomish also requests that the Commission set a refund effective date as early as July 2, 2001, and not later than 60 days from the date of filing of its complaint. A copy of the complaint was served on AEP.

Snohomish has requested privileged treatment of certain information in the complaint, and has filed privileged and public copies of the complaint, a request for privileged treatment, and a protective agreement.

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 July 8, 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 July 8, 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.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–16150 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission and the California State Lands Commission

**[FERC Docket No. CP01–422–000; CA State Clearinghouse No. 2001071035; CSLC EIR No. 710; BLM Reference Nos. CACA–43346 and CACA–17918]**

## Kern River Gas Transmission Company; Notice of Availability/ Completion of the Final Environmental Impact Statement/Report for the Proposed Kern River 2003 Expansion Project

June 20, 2002.

The staffs of the Federal Energy Regulatory Commission (FERC or Commission) and the California State Lands Commission (CSLC) have prepared a final environmental impact statement/report (EIS/EIR) to address natural gas pipeline facilities proposed by Kern River Gas Transmission Company (KRGT).

The final EIS/EIR was prepared as required by the National Environmental Policy Act and the California Environmental Quality Act (CEQA). Its purpose is to inform the public and the permitting agencies about the potential adverse and beneficial environmental impacts of the proposed project and its alternatives, and recommend mitigation measures that would reduce any significant adverse impacts to the maximum extent possible and, where feasible, to a less than significant level. With one exception, the EIS/EIR concludes that the potentially significant adverse environmental impacts of the proposed project can be mitigated to a level of insignificance with appropriate mitigation measures. As discussed in the EIS/EIR, a long-term reduction in the special concern vegetation communities of yucca, cactus, and agave cannot be ruled out and, therefore, potential impacts on these species could be significant. Accordingly, the CSLC's approval of the project would be subject to a Statement of Overriding Considerations under the CEQA due to this significant unavoidable impact that could remain after mitigation is applied.[1]

The Bureau of Land Management (BLM) is participating as a cooperating agency in the preparation of the EIS/EIR because the project would cross Federal land under the jurisdiction of seven field offices in Wyoming, Utah, and Nevada, and one district office and three field offices in California. The U.S. Department of Agriculture, Forest Service (FS) is also a cooperating agency in the preparation of this document because the Dixie National Forest and the Humboldt-Toiyabe National Forest/ Spring Mountains National Recreation Area would be crossed by the project. The EIS/EIR will be used by the BLM to consider issuance of a new or amended right-of-way grant for the portion of the project on Federal lands.

The final EIS/EIR addresses the potential environmental effects of the construction and operation of the following facilities in Wyoming, Utah, Nevada, and California:

- 634.5 miles of 36-inch-diameter pipeline adjacent to KRGT's existing pipeline in Wyoming (Lincoln and Uinta Counties), Utah (Summit, Morgan, Salt Lake, Utah, Juab, Millard, Beaver, Iron, and Washington Counties), Nevada (Lincoln and Clark Counties), and California (San Bernardino County);
- 82.2 miles of 42-inch-diameter pipeline adjacent to the portion of KRGT's existing pipeline that it jointly owns with Mojave Pipeline Company in California (San Bernardino and Kern Counties);
- 0.8 mile of 12-inch-diameter pipeline in Uinta County, Wyoming;
- Three new compressor stations, one each in Wyoming (Uinta County), Utah (Salt Lake County), and Nevada (Clark County) for a total of 60,000 horsepower (hp) of compression;
- Modifications to six existing compressor stations, one in Wyoming (Lincoln County), three in Utah (Utah, Millard, and Washington Counties), one in Nevada (Clark County), and one in California (San Bernardino County) for a total of 103,700 hp of new compression;
- Modifications to one existing meter station in Wyoming (Lincoln County) and four existing meter stations in California (two each in San Bernardino and Kern Counties); and
- Various mainline block valves, internal inspection tool launcher/ receiver facilities, and other appurtenances.

The final EIS/EIR has been placed in the public files of the FERC and the CSLC and is available for public inspection at:

Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371;

and

California State Lands Commission, 100 Howe Avenue, Suite 100 South, Sacramento, CA 95825, (916) 574–1890.

The final EIS/EIR was filed with the U.S. Environmental Protection Agency and submitted to the California State Clearinghouse. The document was also mailed to appropriate Federal, state, and local agencies; elected officials, Native American groups; newspapers; public libraries; intervenors to the FERC's proceeding; and other interested parties who provided scoping comments, commented on the draft EIS/EIR, or wrote to the FERC, the CSLC, or the BLM asking to receive a copy of the document. A formal notice indicating that the final EIS/EIR is available was published in the **Federal Register** and posted in the appropriate County Clerks' offices in California.

A limited number of copies of the final EIS/EIR are available from the FERC's Public Reference and Files Maintenance Branch identified above. Copies may also be obtained from Cy Oggins, CSLC, at the address above. The final EIS/EIR is available for viewing on the project web site at *http://www.kernriver2003.com* and at the public libraries listed in appendix 1 of this notice.[2]

Additional information about the proposed project is available from Cy Oggins at the CSLC at (916) 574–1884, or on the CSLC web site at *http://www.slc.ca.gov*, and from the FERC's Office of External Affairs at (202) 208–1088 (direct line) or you can call the FERC operator at 1–800–847–8885 and ask for External Affairs. Information is also available on the FERC web site at *http://www.ferc.gov* using the ''RIMS''

[1] The CEQA Guidelines Section 15093 requires the CSLC to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered ''acceptable.''

[2] The appendix referenced in this notice is not being printed in the **Federal Register**. A copy is available on the FERC's web site (*http://www.ferc.gov*) at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, or call (202)208–1371. For instructions on connecting to RIMS, refer to page 4 of this notice.

link. Click on the ''RIMS'' link, select ''Docket#,'' and follow the instructions (call (202) 208–2222 for assistance). Access to the texts of formal documents issued by the FERC, such as orders and notices, is also available on the FERC web site by using the ''CIPS'' link, selecting ''Docket#,'' and following the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

Information concerning the involvement of the BLM is available from Jerry Crockford, BLM Project Manager, at (505) 599–6333. Information concerning the involvement of the FS is available from Kathy Slack, Supervisor's Office, at (435) 865–3742.

The CSLC will meet to consider certification of the final EIS/EIR and take action on the proposed project at a public meeting in 2002. Interested parties will be notified of the date, time, and place of the meeting 10 to 15 days in advance. If you have any questions regarding the CSLC meeting, or wish to testify, please contact Cy Oggins at the number above.

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

*Deputy Secretary, Federal Energy Regulatory Commission.*

[FR Doc. 02–16109 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 372–008—California]**

### Southern California Edison; Notice of Availability of Final Environmental Assessment

June 20, 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 application for new license for the Lower Tule Hydroelectric Project, located on the Middle Fork of the Tule River in Tulare County, California, and has prepared a final Environmental Assessment (EA) for the project. The project is partially located within the Sequoia National Forest and the Giant Sequoia National Monument. In the final EA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

On January 15, 2002, the Commission staff issued a draft EA for the project, and requested that comments be filed with the Commission within 30 days. Comments were filed by four entities and are addressed in this final EA for this project.

Copies of the draft and final EA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, NE, Washington, DC, 20426, or by calling 202–208–1371. Copies of the EA are on file with the Commission and are available for public inspection. The EA 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).

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

*Deputy Secretary.*

[FR Doc. 02–16110 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 372–008—California]**

### Southern California Edison; Notice of Availability of Final Environmental Assessment

June 20, 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 application for new license for the Lower Tule Hydroelectric Project, located on the Middle Fork of the Tule River in Tulare County, California, and has prepared a final Environmental Assessment (EA) for the project. The project is partially located within the Sequoia National Forest and the Giant Sequoia National Monument. In the final EA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

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Copies of the draft and final EA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, NE, Washington, DC, 20426, or by calling 202–208–1371. Copies of the EA are on file with the Commission and are available for public inspection. The EA 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).

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

*Deputy Secretary.*

[FR Doc. 02–16110 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

June 20, 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 Major License

b. Project No.: 2180–007

c. Date Filed: June 26, 2001

d. Applicant: PCA Hydro Inc.

e. Name of Project: Grandmother Falls Hydroelectric Project

f. Location: On the Wisconsin River near the town of Bradley, Lincoln County, Wisconsin.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. Applicant Contact: Mr. Kenneth Schulz, Packaging Company of America, N9090 County Road E, Tomahawk, Wisconsin. 54487 (715) 453–2131 Ext. 499.

i. FERC Contact: Michael Spencer, michael.spencer@FERC.fed.us, (202) 219–2846.

j. Deadline for filing motions to intervene and protests: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie 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 and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears 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. *k. Status of environmental analysis:* This application is not ready for environmental analysis at this time. *l. Description of Project:* The existing project consists of: (1) A 39-foot-high, 450-foot-long concrete gravity dam with integral powerhouse and a gated section containing 8 Taintor gates; (2) a 370-foot-long, rock-filled dike with clay core; (3) a 758 acre reservoir with a normal storage capacity of 1,940 area-feet, at a normal pool elevation of 1,419.3 mean sea level; (4) a powerhouse containing three Francis turbines connected to generators with a combined capacity of 3,000 kW, and an average annual generation 17,897 MWh; (5) a 2,900-foot-long transmission line extending from the powerhouse to the Wisconsin Public Service line; and (5) appurtenant facilities. *m. Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20246, or by calling (202) 208–1371. This filing is also 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). A copy is also available for inspection and reproduction at the address in item h. above. n. This notice also consists of the following standard paragraphs:

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (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. 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.

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

*Deputy Secretary.*

[FR Doc. 02–16111 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions to Intervene, and Protests

June 20, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

*a. Application Type:* Non-Project Use of Project Lands and Waters

*b. Project No:* 2232–445

*c. Date Filed:* May 13, 2002

*d. Applicant:* Duke Energy Corporation

*e. Name of Project:* Catawba-Wateree Hydroelectric Project

*f. Location:* On Lake Wylie at the Misty Waters Subdivision, in Gaston County, North Carolina. The project does not utilize federal or tribal lands.

*g. Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

*h. Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006. Phone: (704) 382–5778

*i. FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 219–3076, or e-mail address: *brian.romanek@ferc.gov*.

*j. Deadline for filing comments and motions:* July 22, 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. Please include the project number (2232–445) on any comments or motions filed.

*k. Description of Proposal:* Duke Energy Corporation proposes to lease to Southern Lifestyles, Incorporated one parcel of land underlying the project reservoir (a total of 0.87 acre) for a proposed commercial residential marina. In the proposed lease area three cluster boat docks would be constructed to provide access to the reservoir for off-water residents of the Misty Waters Subdivision. In total the proposed docks would accommodate 34 boats. No dredging is proposed.

*l. Locations of the Application:* 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.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for

filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

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

*Deputy Secretary.*

[FR Doc. 02–16112 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Application for Surrender of Minor Project License and Soliciting Comments, Motions to Intervene, and Protests

June 20, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

*a. Application Type:* Surrender of Minor Project License

*b. Project No.:* P–4021

*c. Date Filed :* June 18, 2002

*d. Applicant:* Buck Creek Corporation

*e. Name of Project:* Lake Tahoma Hydroelectric Project

*f. Location:* The project is located on Buck Creek, a tributary to the South Fork Catawba River, a navigable waterway of the United States, near the City of Marion, McDowell County, North Carolina. This project does not utilize Federal or Tribal lands.

*g. Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

*h. Applicant Contact:* B. Dan Marks, Ph.D., P.E., C/o Marks Enterprises of NC, PLLC, One Palatka Drive, Arden, North Carolina 28704, (828) 684–9804

*i. FERC Contact:* Shannon Dunn at *shannon.dunn@ferc.gov*, or telephone (202) 208–0853.

*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 comments, motions, or protests and requests for cooperating agency status:* July 24, 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.

Please include the project number (P–4021) on any comments or motions filed.

*l. Description of Project:* Buck Creek Corporation, licensee for the Lake Tahoma Hydroelectric Project (Project), requests to surrender its minor project license for the existing, non-operational Project.

*m. Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at*www.ferc.gov*. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

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

*Deputy Secretary.*

[FR Doc. 02–16113 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Intent To Prepare an Environmental Assessment and Notice of Paper Scoping and Soliciting Scoping Comments

June 20, 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 Major License.

b. *Project No.:* 5334–019.

c. *Date filed:* October 2, 2001.

d. *Applicant:* Charter Township of Ypsilanti.

e. *Name of Project:* Ford Lake Hydroelectric Station.

f. *Location:* On the Huron River, Washtenaw County, within the township of Ypsilanti, MI. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Ms. Joann Brinker, Administrative Services/ Human Resources Director, Charter Township of Ypsilanti, 7200 South Huron River Drive, Ypsilanti, MI 48197, (734) 484–0065.

i. *FERC Contact:* Monte TerHaar, (202) 219–2768 or *monte.terhaar@ferc.gov*.

j. *Deadline for filing scoping comments:* 30 days from issuance date of this notice.

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 and Procedure require all interveners 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 intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping 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 (http://www.ferc.gov) under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. The existing Ford Lake Hydroelectric Project consists of: (1) A 1,050 acre reservoir; (2) a 110-foot-long earth embankment dam; (3) a 46.5-foot powerhouse with 2 hydroelectric turbines; (4) a 172-foot-long spillway with six bays, each with a 6-foot by 8-foot sluice gate; (5) a 380-foot-long earth embankment; (6) a 175-foot-long emergency spillway; (7) two vertical shaft turbine/generator units with an installed capacity of 1,920 kilowatts at normal pool elevation; and (8) appurtenant facilities. The project operates run-of-river with a normal reservoir elevation maintained between 684.4 and 684.9 feet M.S.L. Average annual generation between 1995 and 2000 has been 8,664 megawatthours. Generated power is sold to Detroit Power. No new facilities are proposed.

m. 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 g above.

n. Scoping Process—Scoping is intended to advise all parties regarding the proposed scope of the EA and to seek additional information pertinent to this analysis. The Commission intends to prepare one Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action. Should substantive comments requiring reanalysis be received on the NEPA document, we would consider preparing a subsequent NEPA document.

At this time, the Commission staff does not anticipate holding formal public or agency scoping meetings near the project site. Instead, staff will conduct paper scoping.

A Scoping Document (SD) outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD may 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).

As part of scoping the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from comments all available information, especially quantifiable data, on the resources at issue; (3) encourage comments from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis. Consequently, interested entities are requested to file with the Commission any data and information concerning environmental resources and land uses in the project area and the subject project's impacts to the aforementioned.

o. The preliminary schedule for preparing the subject EA is as follows:

| Milestone | Target date |
|---|---|
| Conduct Paper Scoping .. | June/ July 2002. |
| Additional Information (if needed). | Aug. 2002. |
| Issue Notice of Ready for Environmental Analysis. | Oct. 2002. |
| Deadline for Filing Agency Recommendations. | Dec. 2002. |
| Issue Notice of availability of EA. | May 2003. |
| Public Comments on EA Due. | July 2003. |
| Ready for Commission decision on the application. | Sept. 2003. |

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

*Deputy Secretary.*

[FR Doc. 02–16114 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

June 20, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12179–000.

c. *Date filed:* June 3, 2002.

d. *Applicant:* Renewable Power and Light of Saylorville, LLC.

e. *Name of Project:* Saylorville Project.

f. *Location:* On the Des Moines River, Polk County, Iowa utilizing the Saylorville Dam administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Timothy Belinski, Renewable Power and Light of Saylorville, LLC, 115 Aspen Business Center, Aspen, CO 81611, (970)920–6597, E-mail tbelinski@obermeyer.com.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. Deadline for filing motions to intervene, protests and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: 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.

Please include the project number (P–12179–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Saylorville Dam and would consist of: (1) Thirty-six new 280-kW submersible bulb-type generating units mounted on three independent moveable racks for a total installed capacity of 10,080-kW; (2) six new 4,160-volt buried cables and a 100-pair buried control cable; (3) a new 30-foot-square generator control building; (4) a new 45-foot-long, 30-foot-wide 4.16-kV/13.8-kV switchyard; (5) a new 7,000-foot-long, 13.8-kV transmission line; and (6) appurtenant facilities.

Applicant estimates that the average annual generation would be 50,000 MWh and would be sold to a local utility

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing is also 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). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

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

*Deputy Secretary.*

[FR Doc. 02–16115 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

June 20, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12184–000.

c. *Date filed:* June 4, 2002.

d. *Applicant:* Sardis Lake Hydro, LLC.

e. *Name of Project:* Sardis Lake Project.

f. *Location:* On Jackfork Creek, Pushmataha County, Oklahoma utilizing the Sardis Lake Dam administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., Agent for Sardis Lake Hydro, LLC, P.O. Box 535, Rigby, ID 83442, (208)745–8630, E-mail *npsihydro@aol.com*.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: 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.

Please include the project number (P–12184–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Sardis Lake Dam and would consist of: (1) A proposed intake structure, (2) a proposed 200-foot-long, 60-inch-diameter steel penstock, (3) a proposed powerhouse containing one generating unit having an installed capacity of 1.2 MW, (4) a proposed 1-mile-long, 15 kV transmission line, and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 4.496 GWh and would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's

Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing is also 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). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

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

*Deputy Secretary.*

[FR Doc. 02–16116 Filed 6–25–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Meeting

June 19, 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:** June 26, 2002 (30 Minutes Following Regular Commission Meeting).

**PLACE:** Hearing Room 5, 888 First Street, NE., Washington, DC 20426.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Non-Public Investigations and Inquiries and Enforcement Related Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Magalie R. Salas, Secretary. Telephone (202) 208–0400.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–16152 Filed 6–21–02; 2:34 pm]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7237–4]**

## Agency Information Collection Activities: Continuing Collection; Comment Request; ''Information Collection Request for RCRA Reporting and Recordkeeping Requirements for Incinerators, Boilers and Industrial Furnaces Burning Hazardous Waste''

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Information Collection Request for RCRA Reporting and Recordkeeping requirements for Incinerators, Boilers and Industrial furnaces Burning Hazardous Waste, EPA ICR No. 1361.09, OMB Control No. 2050–0073, expires 10/31/02. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before August 26, 2002.

**ADDRESSES:** Commenters must send an original and two copies of their comments referencing EDocket number RCRA–2002–0023 to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: *rcradocket@epamail.epa.gov.* Comments in electronic format should also be identified by the EDocket number RCRA 2002–0023. All electronic comments must be submitted as an ASCII file avoiding the use of specific characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5302W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway 1, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional pages cost $0.15/page. This notice and the supporting documents that detail the National Waste Minimization Partnership Program ICR are also available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

**FOR FURTHER INFORMATION CONTACT:** For general information, call the RCRA Call Center 1–800/424–9346. For specific information regarding this notice, call Margaret R. Bailey, 703/308–4043, fax number 703/308–8433, e-mail ''*bailey.margaret@epa.gov.*''

**SUPPLEMENTARY INFORMATION:**

Affected entities: Entities potentially affected by this action are those which generate, treat and store hazardous waste. The URL for the Waste Minimization Partnership Program ICR is <*http://www.epa.gov/epaoswer/hazwaste/minimize/partner.htm*>.

## I. General Information

### *A. How Can I Get Copies of This Document and Other Related Information?*

1. Docket. EPA has established an official public docket for this action under EDocket No. RCRA–2002–0023. The official public docket is the collection of materials that is available for public viewing at RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC. 20460. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional pages cost $0.15/page. This notice and the supporting documents that detail the National Waste Minimization Partnership Program ICR are also available electronically.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system. EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit 1.B.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

### *B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contract information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa..gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in EDocket No. RCRA–2002–0023. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *rcradocket@epamail.epa.gov.,* Attention EDocket ID No. RCRA–2002–0023. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and two copies of their comments referencing EDocket number RCRA–2002–0023 to: RCRA Docket Information Center, Office of Solid Waste (5305G) U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460. Attention Docket ID No. .

3. *By Hand Delivery or Courier.* Hand deliveries of comments should be made to the Arlington, VA, address: USEPA Crystal Station (CS), 2800 Crystal Drive, Arlington, Virginia 22202.

4. *By Facsimile.* Fax your comments to: 703/308–8433, Attention Docket ID No. .

*C. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

*Title:* Information Collection Request for RCRA Reporting and Recordkeeping requirements for Incinerators, Boilers and Industrial Furnaces Burning Hazardous Waste, ICR Number 1361.09, OMB Control Number 2050–0073, expiring 10/31/02.

*Abstract:* EPA regulates the burning of hazardous waste in incinerators, and cement and lightweight aggregate kilns under 40 CFR part 63, parts 264/265 (Subpart O) and part 266 (Subpart H). The Agency promulgated the MACT standards for the above hazardous waste combustion facilities on September 30, 1999 under the joint authority of the Clean Air Act and Resource Conservation and Recovery Act (RCRA). See 64 FR 52828. The promulgated rule generated legal challenges, petitions and clarification questions from the stakeholders, environmentalists, EPA Regions, States, engineering consultants and the public. The Agency contested several litigation issues and found others amenable to resolution buy amending some portions of the rule.

At this time the Agency wishes to renew the ICR and incorporate any changes to burden from the rule amendments. The burden the Agency is taking comment on today, however, is the current OMB inventory burden, which was approved in October 1999.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

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

(iv) 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.

*Burden Statement:* The total average annual hourly burden for this ICR is estimated to be 316,892 hours for 1,850 responses, which is roughly 171 hours per response. The total annual cost of this ICR is estimated to be $26,221,000 which represents $7,696.000 for capital/start-up costs, and $18,525,000 for operation and maintenance cost. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and

providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 17, 2002.

**Elizabeth A. Cotsworth,**

*Director, Office of Solid Waste.*

[FR Doc. 02–16133 Filed 6–25–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7238–2]**

### Agency Information Collection Activities: Submission for OMB Review, Comment Request, National Emissions Standards for Hazardous Air Pollutants: (NESHAPs) Radionuclides

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Emission Standards for Hazardous Air Pollutants (NESHAPs): Radionuclides. OMB Control Number 2060–0191, expiration date is June 30, 2002. The ICR describes the nature of the information collection and its expected burden and cost, where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before July 26, 2002.

**ADDRESSES:** Send comments, referencing EPA ICR No. 1100.11 and OMB Control No. 2060–0191, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR, contact Susan Auby at EPA by phone at (202) 566–1672, by e-mail at *auby.susan@epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1100.11. For technical questions about the ICR contact Eleanor Thornton-Jones at (202) 564–9773 or by e-mail at *thornton.eleanord@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* National Emission Standards for Hazardous Air Pollutants (NESHAPs): Radionuclides, OMB Control Number 2060–0191, expiration date June 30, 2002. This is a request for extension of a currently approved collection.

*Abstract:* On December 15, 1989, pursuant to section 112 of the Clean Air Act as amended in 1977 (42 U.S.C. 1857), the Environmental Protection Agency (EPA) promulgated NESHAPs to control radionuclide emissions from several source categories. The regulations were published in 54 FR 51653, and are codified at 40 CFR subparts B, K, R, and W.

Information collected is used by EPA to ensure that public health continues to be protected from the hazards of airborne radionuclides by compliance with these standards. If the information were not collected, it is unlikely that a violation of these standards would be identified and, thus, there would be no corrective action initiated to bring the facilities back into compliance. Compliance is demonstrated through emission testing and/or dose calculation. All facilities are required to calculate, monitor, and maintain their records for 5 years. The rationale for the 5 year recordkeeping requirement is from the Code of Federal Regulations (CFR), 40 CFR part 61, Section 61.95. In some cases, they also report their results to EPA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 11, 2002; no comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 94 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Owners and Operators of Elemental Phosphorous, Phosphogypsum Stacks, Underground Uranium Mines, and Uranium Mill Tailings Piles Facilities.

*Estimated Number of Respondents:* 62.

*Frequency of Response:* Annually.

*Estimated Total Annual Hour Burden:* 5,812.

*Estimated Total Annualized Capital, O&M Cost Burden:* $231,350.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1100.11 and OMB Control No. 2060–0191 in any correspondence.

Dated: June 19, 2002.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–16132 Filed 6–25–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7237–6]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request: EPA Laboratory Quality Assurance Evaluation Program for Analysis of *Cryptosporidium* Under the Safe Drinking Water Act

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: EPA Laboratory Quality Assurance Evaluation Program for Analysis of *Cryptosporidium* under the Safe Drinking Water Act, ICR No. 2067.02, OMB Control No. 2040–0246, expiration date of July 31, 2002. The ICR describes the nature of the information

collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before July 26, 2002.

**ADDRESSES:** Send comments, referencing EPA ICR No.2067.02 and OMB Control No. 2040–0246, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-mail at *auby.susan@epamail.epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 2067.02, the ICR number has changed from the last notice. All requests should refer to EPA ICR No. 2067.02 and not EPA ICR No. 2052.02. For technical inquiries, contact Mary Ann Feige, EPA, Office of Ground Water and Drinking Water, Technical Support Center, 26 West Martin Luther King Drive (MS–140), Cincinnati, Ohio 45268, fax number, (513) 569–7191, e-mail address, *feige.maryann@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* EPA Laboratory Quality Assurance Evaluation Program for Analysis of *Cryptosporidium* under the Safe Drinking Water Act (OMB Control No. 2040–0246 ; EPA ICR No. 2067.02) expiring 7/31/02. This is a request for extension of a currently approved collection.

*Abstract:* EPA is initiating the Laboratory Quality Assurance Program for *Cryptosporidium* analysis to ensure an adequate capacity at approved laboratories to support Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) monitoring. This is a voluntary program open to laboratories analyzing *Cryptosporidium* in water. EPA will be collecting data on laboratories, ability and capacity to measuring *Cryptosporidium* with Methods 1622/23.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 4, 2002. Three comments were received.

Comments requested further information on the details of the Laboratory Quality Assurance Program. In response, EPA has added supplementary information to the ICR and also developed a webpage to provide further information on the program; the website can be accessed at *http://www.epa.gov/safewater/lt2/cla_final.html.*

Commentors expressed concern about identifying adequate laboratory capacity to implement LT2ESWTR, the burden costs, training opportunities, and grandfathered data, EPA has addressed all of these comments in the ICR supporting statement.

*Burden Statement:* The annual public reporting and record keeping burden for this collection of information is estimated to average 18 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Testing Laboratories.

*Estimated Number of Respondents:* 60.

*Frequency of Response:* 3 times per year.

*Estimated Total Annual Hour Burden:* 4347 hours.

*Estimated Total Annualized Capital, O&M Cost Burden:* $123,380.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 2067.02 and OMB Control No. 2040–0246 in any correspondence.

Dated: June 10, 2002.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–16134 Filed 6–25–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7237–7]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request; Health Effects of Microbial Pathogens in Recreational Waters

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Health Effects of Microbial Pathogens in Recreational Waters, EPA ICR No. 2081.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instruments.

**DATES:** Comments must be submitted on or before July 26, 2002.

**ADDRESSES:** Send comments, referencing EPA ICR No. 2081.01, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-mail at *auby.susan@epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 2081.01. For technical questions about the ICR contact Elizabeth Sams in EPA's Office of Research and Development at (919) 843–3161.

**SUPPLEMENTARY INFORMATION:**

*Title:* Health Effects of Microbial Pathogens in Recreational Waters, EPA ICR Number 2081.01. This is a new collection.

*Abstract:* This study will be conducted, and the information collected, by the Epidemiology and

Biomarkers Branch, Human Studies Division, National Health and Environmental Effects Research Laboratory, Office of Research and Development, U.S. Environmental Protection Agency (EPA). Participation of adults and children in this collection of information is strictly voluntary.

This information is being collected as part of a research program consistent with the section 3(a) (v) (1) of the Beaches Environmental Assessment and Coastal Health Act of 2000 and the strategic plan for EPA's Office of Research and Development (ORD) and the Office of Water entitled ''Action Plan for Beaches and Recreational Water.'' The Beaches Act and ORD's strategic plan have identified research on effects of microbial pathogens in recreational waters as a high-priority research area with particular emphasis on developing new water quality indicator guidelines for recreational waters. EPA has broad legislative authority to establish water quality criteria and to conduct research to support these criteria. This data collection is for a series of epidemiological studies to evaluate exposure to and effects of microbial pathogens in marine and fresh (Great Lakes) recreational waters as part of EPA's research program on exposure and health effects of microbial pathogens in recreational waters. The results of these health effects studies will be used to document human health effects associated with recreational water use and correlate these health effects with ongoing EPA studies to identify a new generation of indicators for detection of human pathogens in recreational water and appropriate, effective, and expeditious testing methods for these indicators (addressed separately under section 3(a) (v) (2 & 3) of the Beaches Environmental Assessment and Coastal Health Act of 2000). The results will be used to develop mathematical relationships that will be used for the generation of new national water quality guidelines and appropriate monitoring guidelines.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on February 15, 2002, (67 FR 7150); three comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average about a half hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Interview & Telephone Follow-ups:* Based on consultation with the individuals listed in section 3(c) of the ICR, and our experience with similar types of information collection, we estimate that each family will spend an average of 30 minutes completing the beach interview and will require no record keeping. This includes the time for reviewing the information pamphlet and answering the questions. We estimate that each family will spend an average of 30 minutes completing the first home telephone interview and 20 minutes completing the second home telephone interview. The telephone interviews will require no record keeping.

*Respondents/Affected Entities:* Entities potentially affected by this action are families frequenting fresh and marine water beaches in the continental United States.

*Estimated Number of Respondents:* 4500.

*Frequency of Response:* Once.

*Estimated Total Annual Hour Burden:* 5,000

*Estimated Total Annualized Capital, O&M Cost Burden:* $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 2081.01 in any correspondence.

Dated: June 10, 2002.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–16135 Filed 6–25–02; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7237–8]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request; NESHAP Subpart HH: National Emission Standards for Hazardous Air Pollutants (NESHAP) From Oil and Natural Gas Production

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP Subpart HH: National Emission Standards for Hazardous Air Pollutants (NESHAP) From Oil and Natural Gas Production; OMB Number 2060–0417; expiration date July 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before July 26, 2002.

**ADDRESSES:** Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing a respondent burden, including through the use of automated collection techniques to Susan Auby, Collection Strategies Division (Mail Code 2822T), Office of Environmental Information, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for EPA. Include the EPA ICR number 1788.03 and OMB Control Number 2060–0417 in any correspondence.

**FOR FURTHER INFORMATION:** For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672 by email at *auby.susan@epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No.1788.03. For technical questions about the ICR contact Dan Chadwick of the Office of Compliance at (202) 564–7054 or via E-mail at *chadwick.dan@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* NESHAP Subpart HH: National Emission Standards for Hazardous Air Pollutants (NESHAP) From Oil and Natural Gas Production (OMB Control No. 2060–0417 ; EPA ICR No. 1788.03) expiring 7/31/2002. This is a request for extension of a currently approved collection.

*Abstract:* The National Emission Standards for Hazardous Air Pollutants (NESHAP), for the regulations published at 40 CFR part 63, subpart HH were proposed on February 6, 1998, and promulgated on June 17, 1999. These regulations apply to the following facilities in 40 CFR part 63, subpart HH: Facilities that are major sources or area sources of hazardous air pollutants (HAP) that process, upgrade, or store hydrocarbon liquids prior to the point of custody transfer; or that process, upgrade, or store natural gas prior to the point at which natural gas enters the natural gas transmission and storage source category, or is delivered to a final end user, and that commence construction, modification or reconstruction after the date of proposal. Specifically exempted from this regulation are oil and natural gas production wells. This information is being collected to assure compliance with 40 CFR part 63, subpart HH. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any start-up, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NESHAP.

Any owner or operator subject to the provisions of this part shall maintain a file of these records, and retain the file for at least 5 years following the date of such occurrences, maintenance reports, and records. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 30, 2002 (67 FR 4421). No comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6.9 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Owners and Operators of Oil and Natural Gas Production Facilities.

*Estimated Number of Respondents:* 498.

*Frequency of Response:* On Occasion, Semi-Annually, Annually.

*Estimated Total Annual Hour Burden:* 29,489 hours.

*Estimated Total Annualized Capital and Operating & Maintenance Cost Burden:* $567,093.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the addresses listed above. Please refer to EPA ICR No. 1788.03 and OMB Control No. 2060–0417 in any correspondence.

Dated: June 13, 2002.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–16136 Filed 6–25–02; 8:45 am]

**BILLING CODE 6560–50–U**

## ENVIRONMENTAL PROTECTION AGENCY

**[AD–FRL–7238–1]**

## National Emission Standards for Hazardous Air Pollutants: Revision of Area Source Category List Under Section 112(c)(3) and 112(k)(3)(B)(ii) of the Clean Air Act

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

**ACTION:** Notice of revisions to the area source category list under the Integrated Urban Air Toxics Strategy.

**SUMMARY:** This notice adds 18 area source categories of hazardous air pollutants (HAP) to the list developed under the Integrated Urban Air Toxics Strategy (Strategy). Required under section 112(c)(3) and 112(k)(3)(B)(ii) of the Clean Air Act (CAA), the Strategy's area source category list constitutes an important part of EPA's agenda for regulating stationary sources of air toxics emissions. The revisions to the list of area sources have not been reflected in any previous notices and are being made without public comment on the Administrator's own motion. Such revisions are deemed by EPA to be without need for public comment based on the nature of the actions.

**EFFECTIVE DATE:** June 26, 2002.

**ADDRESSES:** Docket No. A–97–44 contains supporting information used in development of this notice. The docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. The docket is located in EPA's Air and Radiation Docket and Information Center (6102), Room M–1500, 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara B. Driscoll, Policy, Planning and Standards Group, Emission Standards Division (C439–04), EPA, Research Triangle Park, North Carolina 27711, facsimile number (919) 541–0942 telephone number (919) 541–1051, electronic mail (e-mail): *driscoll.barbara@epa.gov.*

**SUPPLEMENTARY INFORMATION:** *Docket.* The docket for this action is A–97–44. The docket is an organized file of all the information submitted to or otherwise relied upon by the Agency in the development of the revised list of area source categories. The principal purpose of the docket is to allow interested parties to identify and locate documents that serve as a record of the process engaged in by the Agency to publish today's revision to the initial list. The docket is available for public inspection at EPA's Air and Radiation Docket and Information Center, which is listed in the **ADDRESSES** section of this notice.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of today's notice will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the notice will be posted on the TTN's policy and guidance page, *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air

pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

**I. What Is the History of the Integrated Urban Air Toxics Strategy Area Source Category List?**

The CAA includes two provisions, section 112(c)(3) and 112(k)(3)(B)(ii), that instruct EPA to identify and list area source categories representing at least 90 percent of the emissions of the 30 ''listed'' (or area source) HAP (see July 19, 1999, The Integrated Urban Air Toxics Strategy, 64 FR 38706), and that are, or will be, subject to standards under section 112(d) of the CAA. For this effort we used urban area source information from the 112(k) inventory which represents a baseline year of 1990. In the July 1999 Strategy, we identified 16 area source categories that had already been listed for regulation under the CAA, and 13 area source categories that were being listed under section 112(c)(3) for the first time. These 29 area source categories are:

- Cyclic Crude and Intermediate Production
- Flexible Polyurethane Foam Fabrication Operations
- Hospital Sterilizers
- Industrial Inorganic Chemical Manufacturing
- Industrial Organic Chemical Manufacturing
- Mercury Cell Chlor-Alkali Plants
- Gasoline Distribution Stage 1
- Municipal Landfills
- Oil and Natural Gas Production
- Paint Stripping Operations
- Plastic Materials and Resins Manufacturing
- Publicly Owned Treatment Works
- Synthetic Rubber Manufacturing
- Chromic Acid Anodizing
- Commercial Sterilization Facilities
- Other Solid Waste Incinerators (Human/Animal Cremation)
- Decorative Chromium Electroplating
- Dry Cleaning Facilities
- Halogenated Solvent Cleaners
- Hard Chromium Electroplating
- Hazardous Waste Combustors
- Industrial Boilers
- Institutional/Commercial Boilers
- Medical Waste Incinerators
- Municipal Waste Combustors
- Open Burning Scrap Tires
- Portland Cement
- Secondary Lead Smelting
- Stationary Internal Combustion Engines.

Each of the source categories that were listed for the first time (the first 13 area source categories on the list above) contributed at least 15 percent of the total area source urban emissions of at least one of the 30 area source HAP. We also took credit for the percentage of emission contribution from the 16 area source categories that had already been listed (the last 16 area source categories on the list above). Since then, we added Secondary Aluminum Production to our list of major and area source categories (66 FR 8220, January 30, 2001). The listing of all these categories, however, does not meet the requirement to list area sources representing 90 percent of the area source emissions of the 30 area source HAP. In the Strategy, we indicated that we would be adding additional area source categories as necessary to meet the 90 percent requirement and would complete our listing by 2003.

**II. Why Is EPA Issuing This Notice?**

Under provisions of section 112(c)(3) and 112(k)(3)(B)(ii), this notice announces the addition of 18 area source categories to those we listed in July 1999 (64 FR 38721) and, as modified in January 2001 (66 FR 8220). While this listing is again based on the 112(k) inventory which represents urban area information for 1990, current information will be used for any type of regulatory development. Each of the source categories contributes between 4 and 16 percent of the total area source emissions for at least one of the 30 area source HAP and makes progress toward meeting our requirement to address 90 percent of the emissions of each of the 30 area source HAP. The additional area source categories being listed pursuant to section 112(c)(3) and 112(k)(3)(B)(ii) are:

- Acrylic Fibers/Modacrylic Fibers Production
- Plating and Polishing
- Agriculture Chemicals & Pesticides Manufacturing
- Autobody Refinishing Paint Shops
- Cadmium Refining & Cadmium Oxide Production
- Flexible Polyurethane Foam Production
- Iron Foundries
- Lead and Acid Battery Manufacturing
- Miscellaneous Organic Chemical Manufacturing (MON)
- Pharmaceutical Production
- Polyvinyl Chloride & Copolymers Production
- Pressed and Blown Glass & Glassware Manufacturing
- Secondary Copper Smelting
- Secondary Nonferrous Metals
- Sewage Sludge Incineration
- Stainless and Nonstainless Steel Manufacturing Electric Arc Furnaces (EAF)
- Steel Foundries
- Wood Preserving.

**III. Administrative Requirements**

Today's notice is not a rule; it is essentially an information-sharing activity which does not impose regulatory requirements or costs. Therefore, the requirements of Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), Executive Order 13132 (Federalism), Executive Order 13211 (Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use), the Regulatory Flexibility Act, the National Technology Transfer and Advancement Act, and the Unfunded Mandates Reform Act do not apply to today's notice. Also, this notice does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), a regulatory action determined to be ''significant'' is subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may either (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The OMB has determined that this action is not significant under the terms of Executive Order 12866.

Dated: June 17, 2002.

**Jeffrey R. Holmstead,**

*Assistant Administrator for Air and Radiation.*

[FR Doc. 02–16142 Filed 6–25–02; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7237–9]**

### Request for Nominations to the National and Governmental Advisory Committees to the U.S. Representative to the North American Commission for Environmental Cooperation

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

**ACTION:** Notice of request for nominations.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is inviting nominations of qualified candidates to be considered for appointment to fill vacancies on the National and Governmental Advisory Committees to the U.S. Representative to the North American Commission for Environmental Cooperation. Current vacancies on these committees are scheduled to be filled by October 1, 2002.

**ADDRESSES:** Submit nominations to: Mark Joyce, Designated Federal Officer, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency (1601A), 1200 Pennsylvania Avenue NW., Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Mark Joyce, Designated Federal Officer, U.S. Environmental Protection Agency (1601A), 1200 Pennsylvania Avenue NW., Washington, DC 20004; telephone 202–564–9802; fax 202–501–0661; e-mail *joyce.mark@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The National and Governmental Advisory Committees advise the Administrator of the EPA in the Administrator's capacity as the U.S. Representative to the Council of the North American Commission for Environmental Cooperation (CEC). The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement (NAFTA) Implementation Act, P.L. 103–182 and as directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The Committees are responsible for providing advice to the United States Representative on a wide range of strategic, scientific, technological, regulatory and economic issues related to implementation and further elaboration of the NAAEC. The National Advisory Committee consists of 12 representatives of environmental groups and non-profit entities, business and industry, and educational institutions. The Governmental Advisory Committee consists of 12 representatives from state, local and tribal governments.

Members are appointed by the Administrator of EPA for a two year term with the possibility of reappointment. The Committees usually meet 3 times annually and the average workload for Committee members is approximately 10 to 15 hours per month. Members serve on the Committees in a voluntary capacity, but EPA does provide reimbursement for travel expenses associated with official government business.

The following criteria will be used to evaluate nominees:

- They have extensive professional knowledge of the subjects the Committees examine, including trade and the environment, the NAFTA, the NAAEC, and the CEC.
- They represent a sector or group that is involved in the issues the Committees evaluate.
- They have senior level experience that will fill a need on the Committees for their particular expertise.
- They have a demonstrated ability to work in a consensus building process with a wide range of representatives from diverse constituencies.

Nominees will also be considered with regard to the mandates of the Federal Advisory Committee Act that require the Committees to maintain diversity across a broad range of constituencies, sectors, and groups.

Nominations for membership must include a resume describing the professional and educational qualifications of the nominee and the nominee's current business address and daytime telephone number.

Dated: June 12, 2002.

**Mark N. Joyce,**

*Designated Federal Officer.*

[FR Doc. 02–16141 Filed 6–25–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0108; FRL–7182–9]**

### Pesticide Products; Registration Applications

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

**ACTION:** Notice.

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

**DATES:** Written comments, identified by the docket ID number OPP–2002–0108, must be received on or before July 26, 2002.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0108 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By Mail: Regulatory Action Leader, Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8077 and e-mail address: cerrelli.susanne@epa.gov.

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

*A. Does this Action Apply to Me?*

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

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

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

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

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

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0108. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

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

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0108 in the subject line on the first page of your response.

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

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

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0108. Electronic comments may also be filed online at many Federal Depository Libraries.

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

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

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. Registration Application**

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

*Product Containing an Active Ingredient not Included in any Previously Registered Product*

*File Symbol*: 70127–E. *Applicant*: Novozymes Biologicals, Inc., 111 Kelser Mill Road, Salem, VA 24153. *Product name*: Novozymes Biofungicide Green Releaf™ 710-140. *Active ingredient*: *Bacillus licheniformis* Strain SB3086 at 0.14%. *Proposed classification/Use*: None. A biological fungicide for use on ornamental turf, lawns, golf courses, turf farms and ornamental plants as a preventive or curative treatment for several fungal diseases.

**List of Subjects**

Environmental protection, Pesticides and pest.

Dated: June 12, 2002.

**Janet L. Andersen,**

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

[FR Doc. 02–16107 Filed 6–25–02; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0102; FRL–7182–2]**

## Issuance of Experimental Use Permits

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

**ACTION:** Notice.

**SUMMARY:** EPA has granted experimental use permits (EUPs) to the following pesticide applicants. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

**FOR FURTHER INFORMATION CONTACT:** *By mail*: Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

*In person or by telephone*: Contact the designated person at the following address at the office location, telephone number, or e-mail address cited in each EUP: 1921 Jefferson Davis Hwy., Arlington, VA.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

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

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the designated contact person listed for the individual EUP.

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

You may obtain electronic copies of this document from the EPA Internet home page at *http://www.epa.gov/*. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

## II. EUPs

EPA has issued the following EUPs:

*68467–EUP–4, 29964–EUP–2, and 524–EUP–93*. Issuance, Amendment, and Amendment/Extension. Mycogen Seeds c/o Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268, Pioneer Hi-Bred International, Inc., 7250 NW 62nd Avenue, Johnston, IA 5013, and Monsanto Company, 700 Chesterfield Parkway North, St. Louis, MO 63198. These EUPs allow the use of the plant-incorporated protectants *Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production (from the insert of plasmid PHP 12537) in corn (moCry1F corn) and *Bacillus thuringiensis* Cry3Bb protein and the genetic material necessary for its production (vector ZMIR13L) in corn. The EUP issued to Mycogen Seeds c/o Dow AgroSciences allowed the planting of 354 acres of field corn to conduct insect resistance management, agronomic observation, breeding and observation nursery, efficacy, hybrid production plot, and herbicide tolerance study trials. The Mycogen Seeds' program is authorized in the States of California, Colorado, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin, and the Commonwealth of Puerto Rico.

The EUP issued to Pioneer Hi-Bred allowed the planting of 140 acres of field corn to conduct insect resistance management, agronomic observation, breeding and observation nursery, demonstration, efficacy, hybrid production plot, non-target organism, herbicide residue, and herbicide tolerance trials as well as grain and plant tissue production for feeding trials and regulatory studies. The Pioneer Hi-Bred program is authorized in the States of California, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Pennsylvania, Tennessee, Texas, Wisconsin, and the Commonwealth of Puerto Rico.

The EUP amendment for Monsanto lifted the crop destruct requirement of the Agency's April 27, 2001 4,000 acre EUP approval. The EUP amendment/extension for Monsanto allowed the planting of 9,400 acres of field corn to conduct insect resistance management, breeding and observation nursery, efficacy, non-target organism and benefit, seed treatment, inbred seed increase production for further testing and product development, and line per se and hybrid yield trials, as well as grain and plant tissue production for regulatory studies. The Monsanto program is authorized in the States of Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin, and the Commonwealth of Puerto Rico.

These EUPs are effective from April 5, 2002 to April 30, 2002 for Monsanto's amendment lifting the crop destruct provision for the 4,000 acre EUP, from April 10, 2002 to February 28, 2003 for Monsanto's 9,400 acre EUP amendment/extension, April 10, 2002 to March 31, 2003 for Mycogen Seeds, and April 10, 2002 to April 30, 2003 for Pioneer Hi-Bred. Tolerance exemptions have been established for residues of the active ingredients in or on field corn, sweet corn, or popcorn in 40 CFR 180.1214 and 180.1217. The Pioneer Hi-Bred and Mycogen Seeds moCry1F EUPs notice of receipt elicited a comment concerning issues related to the testing of plant-incorporated protectants not covered by a tolerance exemption. The corn grown under their EUPs is covered by a tolerance exemption. The 9,400 acre Monsanto EUP notice of receipt elicited a number of comments from farmers, seed dealers, and academicians supporting approval of the permit extension/amendment.

Further information regarding these EUPs are found with the **Federal Register** notices of receipt, docket numbers OPP–50875B and OPP–50875C (Monsanto) and OPP–50881 (Mycogen Seeds and Pioneer Hi-Bred). (Mike Mendelsohn; Rm. 910W16, Crystal Mall #2; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov*).

Persons wishing to review these EUPs are referred to the designated contact person. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**Authority:** 7 U.S.C. 136.

### List of Subjects

Environmental protection, Experimental use permits.

Dated: June 14, 2002.

**Janet L. Andersen,**

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

[FR Doc. 02–16137 Filed 6–25–02; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0079; FRL–7181–8]**

## Availability of the Tolerance Reassessment Decision (TRED) for Linuron

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of the tolerance reassessment decision document for linuron. The linuron overview and decision document have been developed as part of the public participation process that EPA and the

U.S. Department of Agriculture (USDA) are now using for involving the public in the reassessment of pesticide tolerances as a result of the Food Quality Protection Act (FQPA), and in the reregistration of individual pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

**DATES:** Comments, identified by docket ID number OPP–2002–0079, must be received by EPA on or before July 26, 2002.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0079 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Dirk Helder, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–4610; e-mail address: *Helder.Dirk@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

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

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the tolerance reassessment decision document for linuron, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of the pesticide FQPA and interim risk management decision documents released to the public may also be accessed at http://www.epa.gov/pesticides/reregistration/status.htm.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0079. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

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

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0079 in the subject line on the first page of your response.

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

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

3. *Electronically*. You may submit your comments electronically by e-mail to: *opp-docket@epa.gov*, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0079. Electronic comments may also be filed online at many Federal Depository Libraries.

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

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

## III. What Action is the Agency Taking?

EPA has assessed the risks of linuron and is reporting on the FQPA Tolerance Reassessment Decision for this pesticide. EPA completed the Linuron Reregistration Eligibility Decision (RED) prior to the 1996 enactment of the Food and Quality Protection Act; therefore, while no reregistration decision is required at present, risks from non-occupational exposure to linuron through food, drinking water, and residential uses must be reassessed. There are no residential uses of linuron. The Agency has reassessed the 40 tolerances for linuron and determined that residues in food and drinking water are not expected to pose risk concerns. In addition, three new tolerances are proposed for use on cotton gin by-products (9.0 parts per million (ppm)), celeriac (1.0 ppm), and rhubarb (0.5 ppm). Final tolerances are being proposed as part of this Tolerance Reassessment Decision (TRED). Some tolerances may be revised once additional confirmatory field trial data have been submitted to and reviewed by the Agency. In addition, occupational and ecological risk management

decisions were made as part of the 1995 Linuron RED and have been implemented. However, two new minor uses were established for linuron as part of the tolerance reassessment process for use on celeraic and rhubarb. An occupational risk assessment was performed for these two new uses and they do not present risks of concern for the Agency.

EPA works extensively with affected parties to reach the decisions presented in the FQPA tolerance reassessment decision documents. This Notice announces the availability of the linuron overview and decision document which report on FQPA tolerance reassessment and risk management decisions. These and additional supporting documents are available on the internet at *http://www.epa.gov/pesticides/reregistration/status.htm* and in the public docket, OPP–2002–0079. This Notice also announces the beginning of a 30–day public comment period. The docket is open and any comments submitted will be placed in the public docket for consideration. In the absence of substantive comments, the tolerance reassessment decision for linuron will be considered final.

**List of Subjects**

Environmental protection, Chemicals, Pesticides and pests.

Dated: June 17, 2002.

**Lois A. Rossi,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 02–16106 Filed 6–25–02 8:45 am]

**BILLING CODE 6560–50–S**

## FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

### Notice of Meeting

**AGENCY:** Federal Accounting Standards Advisory Board.

**ACTION:** Notice of Meeting for July 2002.

*Board Action:* Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will meet on Monday, July 29 and Tuesday, July 30, 2002, in room 5N30 of the GAO Building, beginning at 9 a.m. and concluding at 5 p.m. each day.

The purpose of the meeting is an educational program designed to cover federal financial management issues for three newly appointed Board members.

Following the July meeting, the schedule for the next three meetings of the Board is as follows:

—Wednesday and Thursday, August 7 and 8, 2002;
—Wednesday and Thursday, October 9 and 10, 2002;
—Wednesday and Thursday, December 11 and 12, 2002.

The purpose of these meetings will be to discuss issues related to:

—Stewardship Reporting;
—National Defense Property, Plant & Equipment;
—Accounting and Auditing Policy Committee issues; and
—Any other topics as needed.

A more detailed agenda for each Board meeting can be seen on the FASAB Web site *www.fasab.gov* one week prior to each meeting. The August, October and December meetings will be held in room 7C13 of the GAO Building.

Any interested person may attend the meetings as an observer. Board discussion and reviews are open to the public. GAO Building security requires advance notice of your attendance. For the July meeting, please notify FASAB by July 22 of your planned attendance by calling 202–512–7350, and for the subsequent meetings one day prior to the respective meeting.

**FOR FURTHER INFORMATION CONTACT:** Wendy Comes, Executive Director, 441 G St., NW., Mailstop 6K17V, Washington, DC 20548, or call (202) 512–7350.

**Authority:** Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: June 20, 2002.

**Wendy M. Comes,**

*Executive Director.*

[FR Doc. 02–16129 Filed 6–25–02; 8:45 am]

**BILLING CODE 1610–01–M**

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. AUC–02–46–A (Auction No. 46); DA 02–1257]**

### 1392–1395 and 1432–1435 MHz, 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz Bands Auction Scheduled for September 18, 2002; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the auction of licenses in the paired 1392–1395 and 1432–1435 MHz bands and in the unpaired 1390–1392 MHz, 1670–1675 MHz, and the 2385–2390 MHz bands (''Auction No. 46'') scheduled to commence on September 18, 2002. Auction No. 46 will include 66 licenses. This document also seeks comment on reserve prices or minimum opening bids and other auction procedural issues.

**DATES:** Comments are due on or before June 6, 2002, and reply comments are due on or before June 13, 2002.

**ADDRESSES:** Comments and reply comments must be sent by electronic mail to the following address: *auction46@fcc.gov.* The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 46 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For legal questions: David Hu (202) 418–0660. For general auction questions: Lyle Ishida (202) 418–0660 or Lisa Stover (717) 338–2888. For service rule questions: Brian Marenco (202) 418–0838.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 46 Comment Public Notice* released May 24, 2002. The complete text of the *Auction No. 46 Comment Public Notice,* including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The Auction No. 46 Comment Public Notice may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

1. The *Auction No. 46 Comment Public Notice* announces the auction of licenses in the paired 1392–1395 and 1432–1435 MHz bands and in the unpaired 1390–1392 MHz, 1670–1675 MHz, and the 2385–2390 MHz bands (''Auction No. 46'') scheduled to commence on September 18, 2002. Auction No. 46 will include 66 licenses. In Auction No. 46, one 2-megahertz block of unpaired spectrum in the 1390–1392 MHz band will be offered in each of 52 geographic areas known as Major Economic Areas (MEAs). Additionally,

two 3-megahertz blocks, each consisting of a pair of 1.5 megahertz segments in the 1392–1395 MHz and 1432–1435 MHz bands, will be offered in each of six regions known as Economic Area Groupings (EAGs). Finally, two 5-megahertz blocks of contiguous unpaired spectrum, one in the 1670–1675 MHz band, and one in the 2385–2390 MHz band, will be offered on a nationwide basis. A complete list of licenses available for Auction No. 46 is included as Attachment A of the Auction No. 46 Comment Public Notice.

2. The following table describes the licenses that will be auctioned:

| Block | Frequencies | Bandwidt | Pairing | Geographic area type | Number of licenses |
|---|---|---|---|---|---|
| A | 1392–1393.5 and 1432–1433.5 MHz. | 3 MHz | 2×1.5 MHz | EAG | 6 |
| B | 1393.5–1395 and 1433.5–1435 MHz. | 3 MHz | 2×1.5 MHz | EAG | 6 |
| | 1390–1392 MHz | 2 MHz | unpaired | MEA | 52 |
| | 1670–1675 MHz | 5 MHz | unpaired | Nationwide | 1 |
| | 2385–2390 MHz | 5 MHz | unpaired | Nationwide | 1 |

3. The Commission recently adopted service rules for the paired 1392–1395 and 1432–1435 MHz bands and the unpaired 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz bands. Of the five frequency bands included in Auction No. 46, only the 1432–1435 MHz and 2385–2390 MHz bands are subject to the reimbursement provisions of the National Telecommunications and Information Administration Organization Act (NTIA Organization Act), as added by the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (NDAA–99). Section 113(g) of the NTIA Organization Act requires certain non-Government licensees to reimburse incumbent Federal entities for the relocation costs such Federal entities incur. It also requires the Federal entity to notify the National Telecommunications and Information Administration (NTIA) prior to auction of the ''marginal costs anticipated to be associated with such relocation or with modifications necessary to accommodate prospective licensees,'' and requires NTIA to provide the Commission with that information prior to auction. The NDAA–99 also directs the NTIA and the Commission to develop reimbursement procedures. The Commission's implementation of NDAA–99 is heavily dependent on reimbursement procedures being promulgated by the NTIA, which have not yet been released. Following the release of such reimbursement procedures, in a separate proceeding the Commission will adopt any additional rules or procedures necessary to supplement NTIA's reimbursement procedures.

4. Licensees will be required to file an application through ULS to request FAS coordination of any fixed station located within the protection radii of a co-primary Government incumbent or any mobile unit which would operate within the protection radii of the co-primary Government incumbent. FAS coordination will be required prior to activation of any fixed or mobile station within the co-primary Government incumbent's protection radii. Additionally, the licensee in the 2385–2390 MHz band will be required to coordinate fixed and mobile operations within the protection radii of non-Government aeronautical flight test sites with the Aerospace and Flight Test Radio Coordinating Council (AFTRCC) prior to filing an application for an individual station license with the Commission. An individual station license will be issued for each coordinated operation.

5. The Balanced Budget Act of 1997 requires the Commission to ''ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *.'' Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Commission therefore seeks comment on the following issues relating to Auction No. 46.

## I. Auction Structure

### *A. Simultaneous Multiple Round (SMR) Auction Design*

6. The Commission proposes to award all licenses included in Auction No. 46 in a single, simultaneous multiple-round auction. As described further, this methodology offers every license for bid at the same time with successive bidding rounds in which bidders may place bids. The Commission seeks comment on this proposal.

### *B. Upfront Payments and Initial Maximum Eligibility*

7. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum. As described further, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction.

8. With these guidelines in mind for Auction No. 46, the Bureau proposes that different formulae be utilized in setting upfront payments for the Nationwide licenses than those used for the MEA and EAG licenses. The Bureau anticipates that values between nationwide and regional licenses will vary, and, accordingly propose the following license-by-license formulae for calculating upfront payments:

*For MEA and EAG Licenses:*

$0.005 * MHz * License Area Population with a minimum of $1,000 per license.

*For Nationwide Licenses:*

$0.01 * MHz * License Area Population with a minimum of $1,000 per license.

9. Accordingly, the Bureau lists all licenses, including the related license area population and proposed upfront payment for each, in Attachment A of the *Auction No. 46 Comment Public Notice.* The Commission seeks comment on this proposal.

10. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine

the number of bidding units on which a bidder may place bids. This limit is a bidder's ''maximum initial eligibility.'' Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 46 Comment Public Notice,* on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed its maximum initial eligibility. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. The Commission seeks comment on this proposal.

*C. Activity Rules*

11. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than wait until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or must use an activity rule waiver (if any remain).

12. The Bureau proposes to divide the auction into three stages, each characterized by an increased activity requirement. The auction will start in Stage One. The Bureau proposes that the auction generally will advance to the next stage (i.e., from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, the Bureau further proposes that it retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau seeks comment on these proposals.

13. For Auction No. 46, the Bureau proposes the following activity requirements:

*Stage One:* In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5⁄4).

*Stage Two:* In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10⁄9).

*Stage Three:* In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty/forty-ninths (50⁄49).

14. The Bureau seeks comment on these proposals. If commenters believe that these activity rules should be changed, they should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

*D. Activity Rule Waivers and Reducing Eligibility*

15. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

16. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any bidding period where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

17. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

18. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a bidding period in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

19. The Bureau proposes that each bidder be provided with five activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth. The Bureau seeks comment on this proposal.

*E. Information Relating to Auction Delay, Suspension, or Cancellation*

20. For Auction No. 46, the Bureau proposes that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

**I. Bidding Procedures**

*A. Round Structure*

21. The Commission will conduct Auction No. 46 over the Internet. Telephonic Bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Full information regarding how to establish such a connection, and related charges, will be provided in the public notice announcing details of auction procedures.

22. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

23. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. The Bureau seeks comment on this proposal.

*B. Reserve Price or Minimum Opening Bid*

24. The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses are subject to auction unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

25. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

26. In light of the Balanced Budget Act's requirements, the Bureau proposes to establish minimum opening bids for Auction No. 46. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool.

27. For Auction No. 46, the Commission proposes that different formulae be utilized in setting minimum opening bids for Nationwide licenses that those used for MEA and EAG licenses. Specifically, the following license-by-license formulae for calculating minimum opening bids are as follows:

*For MEA and EAG Licenses:* $0.005 * MHz * License Area Population with a minimum of $1,000 per license.

*For Nationwide Licenses:* $0.01 * MHz * License Area Population with a minimum of $1,000 per license.

28. The specific minimum opening bid for each license available in Auction No. 46 is set forth in Attachment A of the *Auction No. 46 Comment Public Notice.* Comment is sought on this proposal.

29. If commenters believe that these minimum opening bids will result in substantial numbers of unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the minimum opening bids, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the spectrum in the 1392–1395 and 1432–1435 MHz, 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz bands. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

*C. Minimum Acceptable Bids and Bid Increments*

30. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. The Automated Auction System interface will list the nine acceptable bid amounts for each license.

31. Once there is a standing high bid on a license, the Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described. The difference between the minimum acceptable bid and the standing high bid for each license will define the bid increment. The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (i.e., the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

32. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts for licenses that have not yet received a bid will be calculated differently, as explained.

33. For Auction No. 46, the Bureau proposes to calculate minimum acceptable bids by using a smoothing methodology, as it has done in several other auctions. The smoothing formula calculates minimum acceptable bids by first calculating a percentage increment, not to be confused with the bid increment. The percentage increment for each license is based on bidding activity on that license in all prior rounds; therefore, a license which has received many bids throughout the auction will have a higher percentage increment than a license which has received few bids.

34. The calculation of the percentage increment used to determine the minimum acceptable bids for each license for the next round is made at the end of each round. The computation is based on an activity index, which is a weighted average of the number of bids in that round and the activity index from the prior round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighting factor times the number of new bids received on the license in that round plus one minus the weighting factor times the activity index from the prior round. The percentage increment is then calculated as the smaller of (a) a minimum percentage increment multiplied by one plus the activity index and (b) a specified maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will

fluctuate between 10% and 20% depending upon the level of activity for the license.

Equations

$A_i = (C * B_i) + ( (1-C) * A_{i-1})$
$I_{i+1}$ = smaller of ( (1 + $A_i$) * N) and M
$X_{i+1} = I_{i+1} * Y_i$
where,
$A_i$ = activity index for the current round (round i)
C = activity weight factor
$B_i$ = number of bids in the current round (round i)
$A_{i-1}$ = activity index from previous round (round i−1), $A_0$ is 0
$I_{i+1}$ = percentage increment for the next round (round i+1)
N = minimum percentage increment or percentage increment floor
M = maximum percentage increment or percentage increment ceiling
$X_{i+1}$ = dollar amount associated with the percentage increment
$Y_i$ = high bid from the current round

35. Under the smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the high bid from the current round plus the dollar amount associated with the percentage increment, with the result rounded to the nearest thousand if it is over ten thousand or to the nearest hundred if it is under ten thousand.

Examples

License 1
C = 0.5, N = 0.1, M = 0.2
*Round 1 (2 new bids, high bid = $1,000,000)*
i. Calculation of percentage increment for round 2 using the smoothing formula:
$A_1 = (0.5 * 2) + (0.5 * 0) = 1$
$I_2$ = The smaller of ((1 + 1) * 0.1) = 0.2 or 0.2 (the maximum percentage increment)
ii. Calculation of dollar amount associated with the percentage increment for round 2 (using $I_2$):
$X_2 = 0.2 * \$1{,}000{,}000 = \$200{,}000$
iii. Minimum acceptable bid for round 2 = $1,200,000
*Round 2 (3 new bids, high bid = $2,000,000)*
i. Calculation of percentage increment for round 3 using the smoothing formula:
$A_2 = (0.5 * 3) + (0.5 * 1) = 2$
$I_3$ = The smaller of ((1 + 2) * 0.1) = 0.3 or 0.2 (the maximum percentage increment)
ii. Calculation of dollar amount associated with the percentage increment for round 3 (using $I_3$):
$X_3 = 0.2 * \$2{,}000{,}000 = \$400{,}000$
iii. Minimum acceptable bid for round 3 = $2,400,000
*Round 3 (1 new bid, high bid = $2,400,000)*
i. Calculation of percentage increment for round 4 using the smoothing formula:
$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$
$I_4$ = The smaller of ((1 + 1.5) * 0.1) = 0.25 or 0.2 (the maximum percentage increment)
ii. Calculation of dollar amount associated with the percentage increment for round 4 (using $I_4$):
$X_4 = 0.2 * \$2{,}400{,}000 = \$480{,}000$
iii. Minimum acceptable bid for round 4 = $2,880,000

36. As stated, until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded as described, and the minimum opening bid. That is, I = (minimum opening bid)(1 + N){rounded} − (minimum opening bid). Therefore, when N equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

37. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

38. The Bureau retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the Automated Auction System. The Bureau seeks comment on these proposals.

*D. High Bids*

39. At the end of a bidding round, the Automated Auctions System will determine the high bid on each license. In the event of identical high bids on a license in a given round (*i.e.,* tied bids), the Bureau proposes to use a random number generator to select a high bid from among the tied bids. Remaining bidders will be able to submit higher bids in subsequent rounds.

40. A high bid will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. A high bid from a previous round is sometimes referred to as a ''standing high bid.'' Bidders are reminded that standing high bids confer activity credit.

*E. Information Regarding Bid Withdrawal and Bid Removal*

41. For Auction No. 46, the Bureau proposes the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By using the remove selected bids function in the bidding system, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

42. A high bidder may withdraw its standing high bids from previous rounds using the withdraw function in the bidding system. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions of the Commission's rules. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

43. In the *Part 1 Third Report and Order,* 63 FR 770 (January 7, 1998), the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

44. Applying this reasoning, the Bureau proposes to limit each bidder in Auction No. 46 to withdrawing standing high bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. The Bureau seeks comment on this proposal.

*F. Stopping Rule*

45. The Bureau has discretion ''to establish stopping rules before or during multiple round auctions in order to

terminate the auction within a reasonable time.'' For Auction No. 46, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain open until bidding closes simultaneously on all licenses.

46. Bidding will close simultaneously on all licenses after the first round in which no new acceptable bids, proactive waivers, or withdrawals are received. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

47. However, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 46:

i. Utilize a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used at any time or only in stage three of the auction.

ii. Keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) only for licenses on which the high bid increased in at least one of a specified preceding number of rounds.

48. The Bureau proposes to exercise these options only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. The Bureau seeks comment on these proposals.

## II. Conclusion

49. Comments are due on or before June 6, 2002, and reply comments are due on or before June 13, 2002. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction46@fcc.gov.* The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 46 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW, Washington, DC 20554. In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.

50. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

**Margaret Wiener,**

*Chief, Auctions and Industry Analysis Division, WTB.*

[FR Doc. 02–16095 Filed 6–25–02; 8:45 am]

BILLING CODE 6712–01–U

## FEDERAL COMMUNICATONS COMMISSION

**[CC Docket No. 02–61; FCC 02–187]**

## Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., Pursuant to Section 271 of the Telecommunications Act of 1996, For Authorization To Provide In-Region, InterLATA Service in the State of Maine

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Commission grants the section 271 application of Verizon New England Inc., *et al.* (Verizon) for authority to enter the interLATA telecommunications market in the state of Maine. The Commission grants Verizon's application based on its conclusion that Verizon has satisfied all of the statutory requirements for entry, and opened its local exchange markets to full competition.

**DATES:** Effective July 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Christine Newcomb, Attorney, Wireline Competition Bureau (WCB), at (202) 418–1573 or via the Internet at *cnewcomb@fcc.gov.* The complete text of this MO&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order (MO&O) in CC Docket No. 02–61, FCC 02–187, adopted June 18, 2002, and released June 19, 2002. This full text may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's website at *http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications/verizon_vt/welcome.html.*

**Synopsis of the Order**

1. *History of the Application.* On March 21, 2002, Verizon filed an application (Maine Application), pursuant to section 271 of the Telecommunications Act of 1996, with the Commission to provide in-region, interLATA service in the state of Maine.

2. *The Maine Commission's Evaluation.* The Maine Public Utilities Commission (Maine Commission) conducted a comprehensive evaluation of Verizon's compliance with section 271, which included two days of evidentiary hearings. The Maine Commission concluded that Verizon met the checklist requirements of section 271(c) and has taken the appropriate steps to open the local exchange and exchange access markets in Maine in accordance with standards set forth in the Act. Consequently, the Maine Commission recommended that the Commission approve Verizon's in-region, interLATA entry in its (April 10, 2002) evaluation of the Maine Application.

3. *The Department of Justice's Evaluation.* The Department of Justice filed its evaluation of Verizon's Maine Application on April 25, 2002, and recommended approval of the Maine Application.

*Primary Issue in Dispute*

4. *Checklist Item 2—Unbundled Network Elements—Pricing. Checklist Item 2—Unbundled Network Elements—Pricing.* Based on the record, we find that Verizon's Maine UNE rates are just, reasonable, and nondiscriminatory as required by section 251(c)(3), and are based on cost plus a reasonable profit as required by section 252(d)(1). Thus, Verizon's Maine UNE rates satisfy checklist item 2. The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if either ''basic TELRIC principles are violated or the state commission make clear errors in the actual findings on matters so substantial that the end result falls outside the range that a reasonable application of TELRIC principles would produce.'' The Maine Commission concluded that Verizon's UNE rates satisfied the requirement of checklist item 2. While we have not conducted a *de novo* review of the Maine Commission's pricing determinations, we did receive comments concerning two aspects of Verizon's Maine UNE pricing; unbundled local switching rates and the Daily Usage File (DUF) rate.

5. After carefully reviewing these comments, we conclude that, with respect to switching rates, the Maine Commission followed basic TELRIC principles and that the record does not support a finding that the Maine Commission committed clear error in adopting switching rates using the default cost allocation contained in the Synthesis Model. We also conclude that claims concerning Verizon's DUF rate are without merit or premature, and that a DUF rate of zero is an appropriate interim rate. For other rates, because the Maine Commission did not conduct a TELRIC analysis in all circumstances, we compared Verizon's Maine loop and non-loop rates to recently adopted New York rates and find that these rates satisfy our benchmark analysis. Thus, we conclude that Verizon's Maine UNE rates satisfy the requirements of checklist item 2.

6. The Commission also concludes that Verizon meets its obligation to provide access to its operations support systems (OSS)—the systems, databases, and personnel necessary to support the network elements or services. Nondiscriminatory access to OSS ensures that new entrants have the ability to order service for their customers and communicate effectively with Verizon regarding basic activities such as placing orders and providing maintenance and repair services for customers. The Commission finds that, for each of the primary OSS functions (pre-ordering, ordering, provisioning, maintenance and repair, and billing, as well as change management and technical assistance), Verizon provides access that enables competing carriers to perform the functions in substantially the same time and manner as Verizon or, if there is not an appropriate retail analogue in Verizon's systems, in a manner that permits an efficient competitor a meaningful opportunity to compete.

7. Pursuant to this checklist item, Verizon must also provide nondiscriminatory access to network elements in a manner that allows other carriers to combine such elements. Based on the evidence in the record, and upon Verizon's legal obligations under interconnection agreements, Verizon demonstrates that it provides to competitors combinations of already-combined network element as well as nondiscriminatory access to unbundled network elements in a manner that allows competing carriers to combine those elements themselves.

*Other Checklist Items*

8. *Checklist Item 4—Unbundled Local Loops.* Verizon has adequately demonstrated that it provides unbundled local loops as required by section 271. More specifically, Verizon establishes that it provides access to stand alone xDSL-capable loops and high-capacity loops. Also, Verizon provides voice grade loops, both as new loops and through hot-cut conversions, in a nondiscriminatory manner. Finally, Verizon has demonstrated that it has a line-sharing and line-splitting provisioning process that affords competitors nondiscriminatory access to these facilities.

9. In the Commission's overview of Verizon's performance data, it relies primarily on Maine performance data (supplemented with Massachusetts data) collected and submitted by Verizon under the state-adopted carrier-to-carrier standards. Verizon provides evidence and performance data establishing that it can efficiently furnish unbundled loops, for the provision of both traditional voice services and various advanced services, to other carriers in a nondiscriminatory manner.

10. *Checklist Items 1, 3, 5–14.* An applicant under section 271 must demonstrate that it complies with checklist item 1 (interconnection), item 3 (poles, ducts, conduits, and rights of way), item 5 (transport), item 6 (unbundled local switching), item 7 (911/E911 access and directory assistance/operator services), item 8 (white page directory listings), item 9 (numbering administration), item 10 (databases and associated signaling), item 11 (number portability), item 12 (local dialing parity), item 13 (reciprocal compensation), and item 14 (resale). Based on the evidence in the record, and in accordance with Commission rules and orders concerning compliance with section 271 of the Act, the Commission concludes that Verizon demonstrates that it is in compliance with these checklist items in Maine. The Maine Commission also concluded that Verizon complies with the requirements of each of these checklist items.

*Other Statutory Requirements*

11. *Compliance with Section 271(c)(1)(A).* The Commission concludes that Verizon demonstrates that it satisfies the requirements of section 271(c)(1)(A) based on the interconnection agreements it has implemented with competing carriers in Maine. The record demonstrates that competitive LECs serve some business and residential customers using predominantly their own facilities.

12. *Section 272 Compliance.* Verizon has demonstrated that it complies with the requirements of section 272. Significantly, Verizon provides evidence that it maintains the same

structural separation and nondiscrimination safeguards in Maine as it does in Pennsylvania, New York, Connecticut, and Massachusetts—states in which Verizon has already received section 271 authority.

13. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. The Commission views the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that the applicant's entry into the in-region, interLATA market will therefore serve the public interest as Congress expected. While no one factor is dispositive in this analysis, the Commission's overriding goal is to ensure that nothing undermines its conclusion that markets are open to competition.

14. The Commission finds that, consistent with its extensive review of the competitive checklist, barriers to competitive entry in the local market have been removed and the local exchange market today is open to competition. The Commission also finds that the record confirms its view that a BOC's entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist. The Commission also finds that the performance monitoring and enforcement mechanisms developed in Maine, in combination with other factors, provide meaningful assurance that Verizon will continue to satisfy the requirements of section 271 after entering the long distance market.

15. *Section 271(d)(6) Enforcement Authority.* Working with the Maine Commission, the Commission intends to monitor closely post-entry compliance and to enforce the provisions of section 271 using the various enforcement tools Congress provided in the Communications Act.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02–16094 Filed 6–25–02; 8:45 am]

**BILLING CODE 6712–01–P**

## GENERAL SERVICES ADMINISTRATION

### President's Homeland Security Advisory Council

**AGENCY:** Office of Governmentwide Policy, General Services Administration.

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The President's Homeland Security Advisory Council (PHSAC or Council) will meet in closed session on Tuesday, July 2, 2002, in Washington, DC. The PHSAC will meet to receive law enforcement and intelligence briefings by senior government officials related to homeland security, and to review and discuss the draft national strategy for homeland security. Due to critical mission and schedule requirements, there is insufficient time to provide the full 15 calendar days notice in the **Federal Register** prior to this meeting, pursuant to the final rule on Federal Advisory Committee Management codified at 41 CFR 102–3.150.

**Objectives**

The President's Homeland Security Advisory Council was established by Executive Order 13260 (67 FR 13241, March 21, 2002). The objectives of the PHSAC are to provide advice and recommendations to the President of the United States through the Assistant to the President for Homeland Security on matters relating to homeland security.

**Basis for Closed Meeting**

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.), it has been determined that this PHSAC meeting concerns matters sensitive to homeland security within the meaning of 5 U.S.C. 552b(c)(7) and (9)(B) and that, accordingly, the meeting will be closed to the public.

**Public Comments**

Members of the public who wish to file a written statement with the PHSAC may do so by mail to Mr. Fred Butterfield at the following address: President's Homeland Security Advisory Council, U.S. General Services Administration (GSA/MC, Room G230), 1800 F St., NW., Washington, DC 20405. Comments may also be sent to Fred Butterfield by e-mail at *fred.butterfield@gsa.gov*, or by facsimile (FAX) to (202) 273–3559.

Dated: June 24, 2002.

**James L. Dean,**

*Director, Committee Management Secretariat, Office of Governmentwide Policy, General Services Administration.*

[FR Doc. 02–16289 Filed 6–25–02; 8:45 am]

**BILLING CODE 6820–34–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

**[Program Announcement 02166]**

### Environmental Exposure to Diisocyanate; Notice of the Availability of Funds

**A. Purpose**

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Environmental Exposure to Diisocyanate. This program addresses the ''Healthy People 2010'' priority area of Environmental Health.

The purpose of the program is to conduct exposure assessment(s), biomonitoring, and evaluations of respiratory effects in communities at risk for environmental diisocyanate exposure.

Measurable outcomes of the program will be in alignment with the following performance goals for ATSDR: (1) Develop and provide reliable, understandable information for people in affected communities and tribes and for stakeholders and (2) Build and enhance effective partnerships.

**B. Authority and Catalog of Federal Domestic Number**

This program is authorized under section 104 (i)(7), (9) and (15) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 (42 U.S.C. 9604 (i)(7), (9) and (15)). The Catalog of Federal Domestic Assistance number is 93.206.

**C. Eligible Applicants**

Assistance will be provided to the health departments of States or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian Tribal governments.

**Note:** Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

**D. Availability of Funds**

Approximately $100,000 is available in FY 2002 to fund one award. It is expected that the award will begin on or about September 1, 2002, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

**Use of Funds**

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies, and services. Funds for contractual services may be requested; however, the grantee, as the direct and primary recipient of grant funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Equipment may be purchased with grant funds, however, justification must be provided which should include a cost comparison of purchase versus lease, and title will be retained by ATSDR.

This program does not require in-kind support or matching funds, however, the applicant should describe any in-kind support in the application.

**E. Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient will be responsible for activities under 1. Recipient Activities, and ATSDR will be responsible for the activities listed under 2. ATSDR Activities.

*1. Recipient Activities*

a. Evaluate existing air emissions data and other information to identify communities at risk for diisocyanate exposures.

b. Model the dispersion of diisocyanate releases and define potentially exposed populations.

c. Identify comparable non-exposed comparison communities for each selected exposed community.

d. Establish air monitoring and sampling methodology.

e. Develop the study protocol.

f. Coordinate local Institutional Review Board approval of study protocol.

g. Conduct ambient air monitoring, sampling, and analysis in both exposed and non-exposed communities.

h. Implement the study protocol to include exposure assessments, biomonitoring, and respiratory health evaluations of the community residents in collaboration with ATSDR.

*2. ATSDR Activities*

a. Collaborate in all activities listed above, including development of sampling methodology and study protocol.

b. Provide epidemiologic and environmental technical support.

c. Facilitate external peer review of the protocol and the final report(s).

d. Prepare and submit protocol and supporting materials to the CDC Institutional Review Board (IRB). The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

e. Collaborate with recipient in all phases of data analysis and interpretation.

f. Conduct technical review and facilitate peer review of all reports.

**E. Application Content**

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content.

Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The narrative should be no more than 20 pages, double-spaced, printed on one-side, with one-inch margins, and unreduced fonts.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

**F. Submission and Deadline**

*Application*

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

On or before 5 p.m. Eastern Time July 30, 2002, submit the application to: Technical Information Management Section, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341.

*Deadline:* Applications will be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet submission requirements.

**G. Evaluation Criteria**

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures of Effectiveness must relate to the performance goals as stated in section ''A. Purpose'' of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness will be submitted with the application and will be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by ATSDR.

*1. Proposed Program (40 Percent)*

The extent to which the applicant's protocol addresses (a) the approach, feasibility, adequacy, and rationale of the proposed project design; (b) the technical merit of the proposed project, including the degree to which the project can be expected to yield results that meet the program objective (including quality assurance and quality control procedures) for the proposed project; (c) the proposed project timeline, including clearly established project objectives for which progress toward attainment can and will be measured. Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures must be objective/quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation; (d) the proposed method to disseminate study results; and (e) the degree to which the applicant has met the CDC Policy requirements regarding the

inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

*2. Program Personnel (30 Percent)*

The extent to which the applicant has described (a) the qualifications, experience, and commitment of the principal investigator (or project director) and their ability to devote adequate time and effort to provide effective leadership; and (b) the qualifications and experience of program personnel, including demonstrated capability and experience in conducting the air monitoring, sampling, and modeling activities described under the recipient activities.

*3. Applicant Capability and Coordination Efforts (20 Percent)*

The extent to which the proposal has described (a) the capability of the applicant's administrative structure to foster successful scientific and administrative management of a study; and (b) the capability of the applicant to demonstrate an appropriate plan for interaction with other public health and environmental agencies.

*4. Data Access (10 Percent)*

The extent to which the proposal has demonstrated the capability of the applicant to access records that will be helpful in identifying facilities that are currently using diisocyanates.

*5. Program Budget—(Not Scored)*

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of cooperative agreement funds.

*6. Human Subjects (Not Scored)*

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus two copies of:

1. Semi-annual progress reports (Attachment II)

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

4. Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–17 Peer and Technical Reviews of Final Reports of Health Studies—ATSDR
AR–18 Cost Recovery—ATSDR
AR–19 Third Party Agreements—ATSDR
AR–22 Research Integrity

**I. Where To Obtain Additional Information**

A complete copy of the announcement may be downloaded from CDC's home page on the Internet at: *http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Edna Green, Grants Management Specialist, Grants Management Branch, Procurement & Grants Office, Centers for Disease Control and Prevention, Announcement 02166, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number (770) 488–2722, Email address: ecg4@cdc.gov.

For program technical assistance, contact: Curtis W. Noonan, PhD, Epidemiologist, Division of Health Studies, Agency for Toxic Substances and Disease Registry, Executive Park, Building 4, Suite 1300, Atlanta, GA 30305, Telephone (404) 498–0588, E-mail Address: *Cnoonan@cdc.gov;* Or Nelda Godfrey, Funding Resource Specialist, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Rd., NE., Mail Stop E–31, Atlanta, GA 30333, Telephone (404) 498–0628, E-mail Address: *nag9@cdc.gov.*

Dated: June 11, 2002.

**Edward J. Schultz,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

**Attachment II—Semi-Annual Report**

Semi-annual report should include:

1. A brief program description.

2. A listing of program goals and objectives accompanied by a comparison of the actual accomplishments related to the goals and objectives established for the period.

3. If established goals and objectives to be accomplished were delayed, describe both the reason for the deviation and anticipated corrective action or deletion of the activity from the project.

4. Other pertinent information, including the status of the program.

5. Measures of Effectiveness shall be a data requirement to be submitted with or incorporated into the semi-annual progress reports.

6. Financial recap of obligated dollars to date as a percentage of total available funds.

[FR Doc. 02–16090 Filed 6–25–02; 8:45 am]

BILLING CODE 4163–70–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Study Team for the Los Alamos Historical Document Retrieval and Assessment Project

The Centers for Disease Control and Prevention(CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the following meeting.

*Name:* Public Meeting of the Study Team for the Los Alamos Historical Document Retrieval and Assessment Project.

*Time and Date:* 5 p.m.–7 p.m., July 10, 2002.

*Place:* Northern New Mexico Community College, Joseph Montoya Building, Espanola Campus, 921 Paseo de Onate, Espanola, New Mexico 87532.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

*Background:* Under a Memorandum of Understanding (MOU) signed in December 1990 with Department of Energy (DOE) and replaced by an MOU signed in 1996, the Department of

Health and Human Services (HHS) is given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between the ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

*Purpose:* This Study Team is charged with locating, evaluating, cataloguing, and copying documents that contain information about historical chemical or radionuclide releases from facilities at the Los Alamos National Laboratory since its inception. The purposes of this meeting is to review the goals, methods, and schedule of the project, discuss progress to date, provide a forum for community interaction, and serve as a vehicle for members of the public to express concerns and provide advice to CDC.

*Matters to Be Discussed:* Agenda items include a presentation from the National Center for Environmental Health (NCEH) and/or its contractor regarding the information gathering project that is underway. There will be time for public input, questions, and comments. All agenda items are subject to change as priorities dictate.

*Contact Persons for Additional Information:* Phillip Green, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 1600 Clifton Road, N.E. (E–39), Atlanta, GA 30333, telephone 404/498–1717, fax 404/498–1811.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: June 20, 2002.

**John Burckhardt,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 02–16089 Filed 6–25–02; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00E–1402]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; BETAXON

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for BETAXON and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product BETAXON (levobetaxolol). BETAXON is indicated for lowering intraocular pressure in patients with chronic open-angle glaucoma or ocular hypertension. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for BETAXON (U.S. Patent No. 4,911,920) from Alcon Laboratories, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 17, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of BETAXON represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for BETAXON is 947 days. Of this time, 765 days occurred during the testing phase of the regulatory review period, while 182 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: July 23, 1997. The applicant claims June 23, 1997, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 23, 1997, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: August 26, 1999. The applicant claims August 25, 1999, as the

date the new drug application (NDA) for BETAXON (NDA 21–114) was initially submitted. However, FDA records indicate that NDA 21–114 was submitted on August 26, 1999.

3. *The date the application was approved*: February 23, 2000. FDA has verified the applicant's claim that NDA 21–114 was approved on February 23, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 579 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written comments and ask for a redetermination by August 26, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 23, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 22, 2002.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. 02–16052 Filed 6–25–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Traumatic Brain Injury Program; State Grants for Traumatic Brain Injury

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of availability of funds.

**SUMMARY:** The Health Resources and Services Administration (HRSA) announces that about $1.2 million in fiscal year (FY) 2002 funds is available for up to 11 State Grants for Traumatic Brain Injury (TBI). The purpose of the TBI program is to assist individuals who have sustained a traumatic brain injury in obtaining health care and other services. Awards will be made in three categories: (1) Planning Grants, to assist States in developing the infrastructure needed to implement a State TBI program; (2) Implementation Grants, to assist States in moving toward statewide systems that assure access to comprehensive and coordinated TBI services, and (3) Post Demonstration Grants, to assist States which have successfully completed a TBI Implementation Grant. HRSA expects to award two Planning Grants, one Implementation Grant, and eight Post-Demonstration Grants this fiscal year. All awards will be made under the program authority of the Public Health Service Act, Title XII, section 1252 (42 U.S.C. 300d–52), and will be administered by the Maternal and Child Health Bureau (MCHB), HRSA. Planning Grants may be approved for up to two years; with awards of up to $75,000. The Implementation Grant may be approved for up to 3 years; the award will be up to $200,000. Post Demonstration Grants will be approved for only one year; awards will be up to $100,000. Funding beyond FY 2002 is contingent upon the availability of funds.

**DATES:** Applicants are requested to notify MCHB of their intent to apply by July 19, 2002. The deadline for receipt of applications is August 2, 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 September 29, 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) or register on-line at: *http://www.hrsa.gov/g_order3.htm* directly. The Traumatic Brain Injury State Grant Program uses the standard Form PHS 5161–1 (rev. 7/00) for applications (approved under OMB No. 0920–0428). Applicants must use the following Catalog of Federal Domestic Assistance (CFDA) numbers to request applications kits: Implementation Grants, #93.234A; Planning Grants, #93.234B; Post Demonstration Grants, #93.234C. 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 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 *jjohns@hrsa.gov,* or 301–443–2088, if you need technical assistance in accessing the MCHB Home Page via the Internet.

This notice will appear on the 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; TBI 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 email: *bhastings@hrsa.gov* (for questions specific to project objectives and activities of the program; or the required Letter of Intent); Marilyn Stewart, 301–443–9022, 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 availability of funds only for TBI Planning Grants, TBI Implementation Grants and TBI Post Demonstration Grants.

*Authorization*

Public Health Service Act, Title XII, section 1252, 42 U.S.C. 300d–52, as amended by Public Law 106–310, section 1304.

**Purpose**

The purpose of the TBI grant program is to improve access, availability, appropriateness and the acceptability of health and other services for people who have sustained a traumatic brain injury (TBI) and their families, through funding systems change initiatives. Planning Grants provide funds to assist States in developing infrastructure in the four identified ''core capacity'' components identified above. Implementation grants provide funds to implement priority elements of the TBI State Plan. Post Demonstration Grants provide funds for capacity-building initiatives to contribute to sustainable change in their systems of community services and supports that reflect best practices.

*Eligibility*

For all TBI grants, State governments are the only eligible applicants for funding. It is understood that applications for a TBI Post-Demonstration Grant will come from the State agency designated as the lead for TBI services; the State must have completed a three-year State TBI Implementation Grant.

*Funding Level/Project Period*

Approximately $150,000 is available in FY 2002 to support two State TBI State Planning awards, at up to $75,000 per award, for project periods of up to two years. Approximately $200,000 is available in FY 2002 to support one Implementation award for up to 3 years Approximately $800,000 is available in FY 2002 to support eight TBI State Post Demonstration awards, at $100,000 per award, for a one-year project period. For each award, the State must contribute, in cash or in kind (including plant, equipment and services), not less than $1 for each $2 of Federal funds provided under the TBI State Grants. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in the amount of such contributions.

The initial budget period for TBI Planning Grants and Implementation Grants is expected to be 12 months, with any subsequent budget period being 12 months each. Continuation of any TBI project from one budget period to the next is subject to satisfactory performance, program priorities and the availability of funds.

*Review Criteria*

An objective review panel will evaluate applications for TBI grants, using criteria and weights specific to each category of grant, which are outlined below.

(1) State Planning Grants:

a. The strength of the plan to develop a statewide Advisory Board (15 points).

b. The adequacy of the State's methodology to develop the four ''core capacity'' components (35 points).

c. The comprehensiveness of the approach to collaboration and partnership (25 points).

d. The adequacy of the organizational and management plan (25 points).

(2) Implementation Grants:

a. The capabilities of the designated Lead Agency (20 points).

b. The adequacy of the involvement of the Statewide Advisory Board (25 points).

c. The strength of the statewide TBI Action Plan in addressing community services and supports that reflect the best practice in the field of traumatic brain injury (25 points).

d. The State capacity building efforts (30 points).

(3) Post Demonstration Grants:

a. The capabilities of the designated State lead agency (20 points).

b. The adequacy of the involvement of the statewide Advisory Board (25 points).

c. The strength of the statewide TBI Action Plan in addressing community services and supports that reflect the best practice in the field of traumatic brain injury (25 points).

d. The State's capacity building efforts (30 points).

Additional criteria used to review and rank applications for this competition are 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 this cooperative agreement 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 which 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: June 10, 2002.

**Elizabeth M. Duke,**

*Administrator.*

[FR Doc. 02–16103 Filed 6–25–02; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 27, 2002, 9 a.m. to June 27, 2002, 10 a.m., Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037 which was published in the **Federal Register** on June 12, 2002, 67 FR 40326–40329.

The meeting will be held on June 28, 2002. The time and location remain the same. The meeting is closed to the public.

Dated: June 18, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16078 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, June 17, 2002, 8 a.m. to June 19, 2002, 6 p.m., Washington Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC, 20005 which was published in the **Federal Register** on April 24, 2002, 67 FR 20143.

The meeting location has been changed to the Wyndham Washington Hotel. The meeting is closed to the public.

Dated: June 18, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16069 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Initial Review Group Subcommittee H—Clinical Groups.

*Date:* July 22–23, 2002.

*Time:* 8:30 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz Carlton—Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

*Contact Person:* Deborah R. Jaffe, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8038, MSC 8328, Bethesda, MD 20892, (301) 496–7721, *dj86k@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 18, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16080 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institution of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel Biology and Transplantation of the Human Sterm Cell.

*Date:* July 17, 2002.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Virginia P. Wray, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8125, Rockville, MD 20892–7405, *vw8z@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 18, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16081 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Initial Review Group Subcommittee D—Clinical Studies.

*Date:* July 30–31, 2002.

*Time:* 7 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* William D. Merritt, PhD, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8129, MSC 8328, Bethesda, MD 20892–8328, 301–496–9767.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 18, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16082 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Initial Review Group, Subcommittee E—Cancer Epidemiology, Prevention & Control.

*Date:* July 30–31, 2002.

*Time:* 4 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Mary C. Fletcher, Phd, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, RM 8115, Bethesda, MD 20892, 301/496–7413.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395; Cancer Treatment Research; 93.398; Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 18, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16083 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidental trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel Disseminating Evidence Based Intervention Resource Products.

*Date:* July 18, 2002.

*Time:* 11:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Executive Plaza North, 6130 Executive Boulevard, Conference Room E, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Joyce C. Pegues, PHD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892, 301/594–1286.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 18, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16084 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Initial Review Group, Subcommittee C—Basic & Preclinical.

*Date:* July 30–August 2, 2002.

*Time:* 7 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Michael B. Small, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8040, Bethesda, MD 20892, 301/402–0996.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 18, 2002

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16085 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Flexible System to Advance Innovative Research (FLAIR).

*Date:* July 22–23, 2002.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Rockville, MD 20814.

*Contact Person:* Thomas M. Vollberg, PhD., Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 703/7145, Rockville, MD 20852, 301/594–9582. *vollbert@mail.nih.gov.*

(Catalog of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 18, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16086 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel Postdoctoral Research Training Grants.

*Date:* July 12, 2002.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Arthur L. Zachary, PhD, Office of Scientific Review, Naitonal Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13H, Bethesda, MD 20892, (301) 594–2886, *zacharya@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 18, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16067 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institutes of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel Loan Repayment Programs: Clinical and Pediatric Research.

*Date:* July 1, 2002.

*Time:* 10:30 a.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* National Institute of General Medical Sciences, NIH, Building 45, Room 1AS–13, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Helen R. Sunshine, PhD, Chief, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2881.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research 93,859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 18, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16068 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of Contract Proposal.

*Date:* June 21, 2002.

*Time:* 10 a.m. to 12 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* 6000 Executive Blvd., Room 409, Rockville, MD 20892 (Telephone Conference Call).

*Contact Person:* Mahadev Murthy, PhD, Scientific Review Administrator, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Rockville, MD 20892–2860, Phone: (301) 443–2860, Fax: (301) 443–6077, *MM487@NIH.GOV.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Non-Human Primate Models of Neurobiological Mechanisms of Adolescent Alcohol Abuse.

*Date:* July 23–24, 2002.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Mahadev Murthy, PhD, Scientific Review Administrator, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Rockville, MD 20892–2860, Phone: (301) 443–2860, Fax: (301) 443–6077, *MM487@NIH.GOV.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93/272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 18, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16070 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, ''Assessment of Potential Psychomotor Stimulant Treatment Medications in Rodents''.

*Date:* July 16, 2002.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistant Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: June 18, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16071 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provision

set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institutes of Health Special Emphasis Panel, SBIR-Phase II—Handheld Rating Scales.

*Date:* July 12, 2002.

*Time:* 9 a.m. to 4 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036–3305.

*Contact Person:* David I. Sommers, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470, dsommers@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 18, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16072 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel Child and Adolescent Interdisciplinary Research Networks (CAIRN).

*Date:* July 16, 2002.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Joel Sherrill, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606, 301–443–6102, *jsherril@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel Neuroinformatics Tools RFA.

*Date:* July 17, 2002.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216, *hhaigler@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 18, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Register Advisory Committee Policy.*

[FR Doc. 02–16073 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel Clinical Trials Network.

*Date:* July 9, 2002.

*Time:* 3 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* William C. Grace, PhD, Deputy Director, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2755.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel Training and Career Development.

*Date:* July 26, 2002.

*Time:* 10:30 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Mark Sweiter, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1389.

(Catalog of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Award; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: June 18, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16075 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel ZNS1SRB–S (01): Gene Therapy for Neurologic Disorders.

*Date:* July 10, 2002.

*Time:* 1 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 6001 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NNDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel ZNS1 SRB–E 01: RFA–NS–02–012 Neurodegenerative Disease Assays for HTS & Chemical Genetics

*Date:* July 25, 2002.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.

*Contact Person:* W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NNDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.8 4, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: June 18, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16076 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Suicide Prevention Phase II SBIR Proposals.

*Date:* July 26, 2002.

*Time:* 8:30 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Richard E. Weise, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892–9606, 301–443–1225, *rweise@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Clinical Issues Phase II SBIR Proposals.

*Date:* July 29, 2002.

*Time:* 8:30 a.m. to 2:30 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Richard E. Weise, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892–9606, 301–443–1225, *rweise@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 18, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16077 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Development and Testing of Vaccines Against Anthrax.

*Date:* July 15–16, 2002.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Monarch Hotel, 2401 M Street NW., Washington, DC 20037.

*Contact Person:* Vassil S. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC, 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 18, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16079 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 CAMP (05) Imaging of Melanoma Lesions.

*Date:* July 8, 2002.

*Time:* 2 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Elaine Sierra-Rivera, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverse@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 ECS (02).

*Date:* July 10, 2002.

*Time:* 3 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Anshumali Chaudhari, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, 301–435–1210.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SNEM–5 (02).

*Date:* July 11, 2002.

*Time:* 7 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–T (10) Endocrine and Reproductive Sciences.

*Date:* July 11, 2002.

*Time:* 8 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SSSE–15 Neuroinfromatics.

*Date:* July 11, 2002.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Ritz-Carlton, 1150 22nd Street, NW., Washington, DC 20037.

*Contact Person:* Peter Lyster, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7806, Bethesda, MD 20892, (301) 435–1256, *lysterp@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–7 (10).

*Date:* July 11–12, 2002.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Tracy E. Orr, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, Bethesda, MD 20892, (301) 435–1259, *orrt@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 F03A (20) MDCN Fellowship Review Group A.

*Date:* July 11–12, 2002.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.

*Contact Person:* Michael Nunn, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1257.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–Y (10).

*Date:* July 11–12, 2002.

*Time:* 8:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin Fairfax, 2100 Massachusetts Ave. NW., Washington, DC 2008.

*Contact Person:* Michael R. Schaefer, PhD, Scientific Review Administrator, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7890, Bethesda, MD 20892, (301) 435–2477.*schaefem@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–6 (10).

*Date:* July 11–12, 2002.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* John L. Bowers, PhD., Scientific Review Administrator, Center for Scientific Review, Nationa.l Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SSS–9 (11) SBIR/STTR.

*Date:* July 11–12, 2002.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Bill Bunnag, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, *bunnagb@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SOH (10)

*Date:* July 11–12, 2002.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* River Inn, 924 25th Street, NW., Washington, DC 20037.

*Contact Person:* Charles N. Rafferty, Ph.D., NIOSH Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, Bethesda, MD 20892, (301) 435–3562.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–D (10).

*Date:* July 11–12, 2002.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

*Contact Person:* Karen Sirocco, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, 301–435–0676, *siroccok@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–5 (10) SBIR/STTR Rehabilitation Medicine.

*Date:* July 11–12, 2002.

*Time:* 10 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

*Contact Person:* Nancy Shinowara, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1173, *shinowan@drg.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SNEM–1 (02) SNEM 2 Member Applications.

*Date:* July 11, 2002.

*Time:* 1 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, 301–435–0681, *schwarte@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 GRM (05).

*Date:* July 11, 2002.

*Time:* 2 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Jo Pelham, BA, Scientific Review Administrator, Center for Scientific

Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 CAMP (02) Events in Oncogenic Transformation.

*Date:* July 11, 2002.

*Time:* 2 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Elaine Sierra-Rivera, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverse@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SSS–E BISTI pre-NPEBC, Bioinformatics pre-Centers of Excellence-P20's.

*Date:* July 11–12, 2002.

*Time:* 7 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Ritz-Carlton, 1150 22nd Street, NW., Washington, DC 20037.

*Contact Person:* Peter Lyster, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7806, Bethesda, MD 20892, (301) 435–1256, *lysterp@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 CCVS (01).

*Date:* July 12, 2002.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Russell T. Dowell, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 2180, MSC 7818, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SRG1 SSS–1 (11) B: Small Business: Radiation Biology and Medical Physics.

*Date:* July 12, 2002.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701.

*Contact Person:* Shen K. Yang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892, (301) 435–1213, *yangsh@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 MDCN–5 (10) VIS SBIR STTR.

*Date:* July 15, 2002.

*Time:* 8 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd. Wisconsin at Western Ave., Washington, DC 20015.

*Contact Person:* Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892, (301) 435–1224, *husains@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–6 (10).

*Date:* July 15, 2002.

*Time:* 8:30 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–1 (10) B: Small Business: Diagnosis and Treatment of Cancer.

*Date:* July 15–16, 2002.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701.

*Contact Person:* Shen K. Yang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892, (301) 435–1213, *yangsh@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 BBBP–2 (02) Human Behavioral Pharmacology.

*Date:* July 15, 2002.

*Time:* 10:30 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7848, Bethesda, MD 20892, (301) 594–6836, *tathamt@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–6 (02).

*Date:* July 15, 2002.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–6 (11).

*Date:* July 15, 2002.

*Time:* 12 p.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 18, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16074 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes Of Health

### Prospective Grant Of Exclusive License: Prophylactic and/or Therapeutic Vaccine Against HCV Infection

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a limited field of use exclusive world-wide license to practice the invention embodied in U.S. Serial Number 09/763,260, filed February 20, 2001 (claiming priority to U.S. Provisional Patent Application Serial No. 60/097,446, filed August 21, 1998), entitled ''Modified HCV Peptide Vaccine'' to Intercell AG of Vienna, Austria. These patent rights are assigned to the United States as represented by the Department of Health and Human Services.

**DATES:** Only written comments and/or applications for a license which are received by NIH on or before September 24, 2002, will be considered.

**ADDRESSES:** Requests for a copy of this issued patent or applications, inquiries, comments, and other materials relating to the contemplated license should be directed to: Carol A. Salata, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3821; Telephone: (301) 496–7735 ext 232; Facsimile: (301) 402–0220; E-mail: *salatac@od.nih.gov.*

**SUPPLEMENTARY INFORMATION:** The invention provides immunogenic peptides of HCV core protein that elicit an enhanced immune response, methods for making these peptides, and methods for using these peptides for a variety of therapeutic, diagnostic, and prognostic applications, including a vaccine.

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. It is anticipated that this license may be limited to the field of use as a prophylactic and/or therapeutic vaccine against HCV infection. Intercell AG will use an HCV peptide as a component of an HCV vaccine.

This prospective exclusive license may be granted unless, within 90 days from the date of this published notice, NIH receives written evidence and argument that 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.

Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: June 17, 2002.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer.*

[FR Doc. 02–16088 Filed 6–25–02; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered Species; Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of Finding of No Significant Impact (FONSI) and issuance of permit for incidental take of endangered species.

On November 20, 2001, a notice was published in the **Federal Register** (Vol. 66, No. 224 FR 58159) of the availability of a draft Environmental Assessment and Habitat Conservation Plan and that a permit application had been filed with the U.S. Fish and Wildlife Service (Service) by an Interagency Task Force located in Indianapolis, Indiana. The permit was to incidentally take, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1539), as amended, Indiana bat (Myotis sodalis) in the vicinity of Six Points Road and related development within Hendricks and Marion Counties pursuant to the terms of the Habitat Conservation Plan.

Notice is hereby given that on April 4, 2002, the Proposed Action (Alternative 3) was selected and a Finding of No Significant Impact (FONSI) determination was made for the action as described in the final Environmental Assessment. As authorized by the provisions of the Act, the Service issued a permit (TE–048991) to the above named party subject to certain conditions set forth therein. The permit was granted only after the Service determined it was applied for in good faith, that granting the permit would not be to the disadvantage of the endangered species, and that it was consistent with the purposes and policy set forth in the Endangered Species Act, as amended.

Additional information on this permit may be requested by contacting Mr. Peter Fasbender, at (612) 713–5343, or *peter_fasbender@fws.gov.* The final Environmental Assessment and final Habitat Conservation Plan can be viewed on the Service's Regional website at: *http://midwest.fws.gov/NEPA.*

Dated: May 23, 2002.

**Charlie Wooley,**

*Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.*

[FR Doc. 02–16091 Filed 6–25–02; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Submission of Information Collection to the Office of Management and Budget for Review Under the Paperwork Reduction Act

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs, Office of Indian Education Programs is submitting to the Office of Management and Budget an information collection request which requires renewal. The information collection, Data Elements for Student Enrollment in Bureau-funded Schools, is cleared under OMB Control Number 1076–0122 through June 30, 2002.

**DATES:** Comments must be received on or before July 26, 2002.

**ADDRESSES:** Send comments or suggestions directly to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, 725 17th Street NW, Washington, DC 20503.

Send a copy of your comments to William Mehojah, Director, Office of Indian Education Programs, Bureau of Indian Affairs, 1849 C Street, NW., Mail Stop 3512–MIB, Washington, DC 20240. Facsimile is 202–208–3312.

**FOR FURTHER INFORMATION CONTACT:** Glenn Allison, 202–208–3628 (This is not a toll-free number). Copies of this information collection document will be sent to you, free of charge, when you call and request them.

**SUPPLEMENTARY INFORMATION:** The Secretary of the Interior, through the Bureau of Indian Affairs, is required to provide educational services to federally recognized Indians and Alaska Natives. Beginning with the Snyder Act and continuing with Public Laws 93–638, 95–561, 100–297, 103–382, and 107–110, Congress has passed legislation to ensure Indians receive educational opportunities.

#### I. Abstract

This collection is used to determine a Native American and Alaska Native individual's educational and/or residential service eligibility for enrollment in Bureau-funded schools. The data elements for enrollment information collection is for attendance in elementary and secondary schools operated and funded by the Bureau of Indian Affairs and to address the criteria for attendance that was changed by the passage of Public Law 99–228. This act allows for the tuition free attendance for any Indian student who is a member of a federally recognized tribe or is ¼ degree blood quantum descendant of a member of such tribes, as well as for dependents of Bureau, Indian Health Service, or tribal government employees who live on or near the school site.

On February 7, 2002, a notice of emergency clearance and request for comments to begin the renewal process was published in the **Federal Register** (67 FR 5847), regarding the information collection entitled Data Elements for Student Enrollment in Bureau-funded Schools. The comment period closed on April 8, 2002. The Bureau of Indian Affairs, Office of Indian Education Programs will now process the information collection as a regular clearance request, taking into consideration all comments received.

Six verbal and four written comments were received. A number of individuals verbally requested clarification of the **Federal Register** notice, but did not submit a comment.

*Comment:* All comments received addressed item 18 Physical Exam. One individual favored and all others opposed this item as a requirement for ISEP funding. The one individual who favored this item stated a physical exam is a State accreditation requirement and should be required by all Bureau-funded schools. All other individuals stated physical exams will create a severe and unrealistic burden on families, students, schools, and the Indian Health Service, specifically during the ISEP student count time period, resulting in the non-certification of a significant number of eligible students for ISEP funding due to no physical exam documentation. All individuals stated their school does require physical exams for students participating in athletic activities.

*Response:* The Bureau recognizes a significant number of Bureau-funded schools are located on or near federal Indian reservations serving Indian communities who rely on the Indian Health Service for medical purposes, including physical exams. Because of the number of individuals who commented that requiring physical exams for ISEP funding would create a difficult burden on families, schools, and the Indian Health Service, the Bureau will delete this as a required/mandatory core element. However, if a Bureau-funded school's accreditation agency requires physical exams for all students, the Bureau-funded school must adhere to the accreditation agency. In these instances, the Bureau-funded school will work with their Education Line Officer to establish a time line to accomplish this activity so as not to jeopardize ISEP funding.

*Comment:* Several individuals commented on item 17, Immunization Records, and all favored this item. Two individuals expressed a concern of how and who would be responsible for maintaining student health records: The school registrar, nurse, health coordinator, or public health nurse.

*Response:* The Bureau will maintain Immunization Records as a required/mandatory core element for ISEP funding. The issue of whom will maintain a student's immunization record will be left to the discretion of the school board and/or chief school administrator.

*Comment:* Several individuals commented on item 2, Type of School (Day/Boarding/Dormitory). All comments favored this item. One individual requested that the school's funding identification of Grant, Contract, or Bureau-operated be added. One individual inquired whether the type of school should appear on their letterhead.

*Response:* The Bureau will maintain Type of School as a required/mandatory core element. The issue of whether the school is grant, contract, or bureau-operated does not need to be on the school enrollment application form, nor on its letterhead.

*Comment:* Three individuals commented on item 10, Student's Bureau of Indian Affairs Home Agency. The three individuals questioned the need for this item and whether it was redundant with item 16, Out of Boundary Waiver, and item 11, Home Address. The three individuals stated a majority of their students are from their school's established attendance area and therefore they do not see a need for item 10.

*Response:* The Bureau will maintain Student's Bureau of Indian Affairs Home Agency as a required/mandatory core element. Although the Bureau recognizes a majority of eligible students enrolled in day schools are from that school's home BIA agency, a significant number of boarding schools and peripheral dormitories do enroll students from outside their BIA agency and/or established attendance area. It is very critical boarding schools and peripheral dormitories have this core element on file, primarily for medical and/or emergency purposes and appropriate follow-up with governmental entities/agencies for students placed in a residential setting. Additionally, a number of tribal governing bodies have passed resolutions waiving, eliminating, and/or establishing an open attendance area for all or selected Bureau-funded schools on their reservation. In these instances, this core element will assist schools in identifying where the student resides. The Bureau does not believe a student's BIA home agency is redundant with the out of boundary and home address core elements. In many cases a student's BIA home agency and home address are different. The collection of the three core elements is for separate purposes, but may support one another.

*Comment:* Several individuals commented on items 12, Telephone for Contact in an Emergency, and 13, Signatures b, c, and d. The individuals combined the two items into their comment. Two individuals stated Indian Health Service has an emergency/medical consent form which they are using and prefer. Item 12 was seen as a duplication to the Indian Health Service form. Both individuals requested the Bureau to use the Indian Health Service form as a required supplemental documentation. One individual stated the difficulty of obtaining a school supervisor's signature and recommended only the Education Line Officer's signature be required and obtained during ISEP student count certification.

*Response:* The Bureau will maintain Telephone for Contact in an Emergency and Signatures as required/mandatory core elements. Not all Bureau-funded schools use the Indian Health Service form and there is a definite need for schools to contact a designated individual for an emergency purpose. The Bureau firmly believes the school supervisor, as the local instructional leader, must render a decision accepting or declining a student's enrollment application form. An Education Line Officer's signature for release and acceptance will continue to be required on all Off Reservation Boarding School (ORBS) enrollment application forms.

*Comment:* Two individuals commented on item 16, Out of Boundary Waiver. One individual stated this item be deleted due to his school's established attendance area being reservation-wide. One individual stated this is a difficult annual issue which her tribe needs to appropriately address.

*Response:* The Bureau will maintain the Out of Boundary Waiver as a required/mandatory core element. Congress mandated all Bureau-funded schools establish attendance areas for effective instructional and financial planning purposes. The Bureau recognizes situations will occur requiring a student's enrollment in a school other than the student's established attendance area. The out of boundary waiver process addresses these unique situations. For ISEP funding purposes, the Bureau must have assurances the required documentation and approvals for students enrolled in Bureau-funded schools outside their established attendance area have been obtained and on file. For on-reservation schools, the out of boundary matter is the responsibility of the tribal governing body or its designee through an appropriate resolution. For off-reservation boarding schools, the out of boundary matter is the responsibility of the respective releasing and accepting Education Line Officers through their approval or denial signatures. On-reservation schools that have an approved reservation-wide attendance area are not required to have this core element on file.

*Comment:* One individual stated her tribal school system currently maintains two separate enrollment applications,

one for day schools and one for a dormitory.

*Response:* The Bureau acknowledges this situation and will assist the tribe in determining whether one enrollment application form can address both instructional and residential purposes. The current practice of retrieving two enrollment application forms appears to be redundant, but does not jeopardize ISEP funding, providing the core elements are addressed appropriately.

*Comment:* One individual inquired what is ORBS?

*Response:* We will identify ORBS as Off-Reservation Boarding School.

**II. Request for Comments**

The Office of Management and Budget has up to 60 days to either renew or deny renewal of this application. However, a decision may be made after 30 days; therefore, your comments have a better chance of consideration the closer they are sent to the beginning of the comment period.

We specifically request your comments on the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the BIA, including whether the information will have practical utility;

(2) The accuracy of the BIA's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

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

(4) How to minimize the burden of the information collection on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

Please note that an agency may not conduct or sponsor, and a person is not required to respond, to a collection of information unless it displays a currently valid OMB control number. All comments received from the 60-day **Federal Register** notice and copies of those submitted during this 30-day notice period will be available for public inspection at 1849 C Street NW., Room 3512 of the Main Interior Building, during the hours of 8 a.m. to 4 p.m. except weekends and Federal holidays. If you wish your name and address withheld from the public view, you must state so prominently at the beginning of your comments. We will honor your request to the extent of law.

**III. Data**

*Title:* Data Elements for Bureau-funded Schools, 25 CFR 39.

*OMB Control Number:* 1076–0122.

*Affected Entities:* Bureau-funded schools, students, tribes who operate under Federal funding.

*Frequency of Response:* Annually.

*Estimated Number of Biennial Responses:* 48,000.

*Estimated Time per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 12,000 hours.

Dated: May 24, 2002.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 02–16058 Filed 6–25–02; 8:45 am]

BILLING CODE 4310–6W–P

## DEPARTMENT OF LABOR

### Office of the Secretary

### International HIV/AIDS Workplace Education Program

**AGENCY:** Bureau of International Labor Affairs, Department of Labor.

**ACTION:** Notice of availability of funds and solicitation for cooperative agreement applications (SGA 02–11).

This Notice contains all of the necessary information and forms needed to apply for cooperative agreement funding.

**SUMMARY:** The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), will award funds in one or more cooperative agreements to an organization or organizations to develop and implement HIV/AIDS/STI/TB [1] workplace education projects in West Africa (Benin, Ghana and Togo), the Caribbean (Guyana and Belize), Namibia, Mozambique and Cambodia. USDOL will also award funds to an organization to develop and implement a pilot project focused on workforce development in Malawi aimed at improving the income generating skills of young adults affected by human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS). USDOL is seeking applications from qualified organizations for the implementation of workplace HIV/AIDS prevention and education programs and a strategy for addressing the issue of stigma and discrimination against people living with HIV/AIDS in the workplace. Applicants will submit one proposal for the implementation of all six projects. USDOL, however, reserves the right to award more than one cooperative agreement for the implementation of the projects.

**DATE:** The closing date for receipt of applications is August 27, 2002. Applications must be received by 4:45 p.m. (Eastern Daylight Savings Time) at the address below. No exceptions to the mailing, delivery, and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored.

**ADDRESS:** Application forms will not be mailed. They are published in this **Federal Register** Notice, and in the **Federal Register** which may be obtained from your nearest U.S. Government office, public library or on-line at http://www.nara.gov/fedreg/nfpubs.html. Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Reference: SGA 02–11, Washington, DC 20210. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted; however, the applicant bears the responsibility for timely submission.

**FOR FURTHER INFORMATION CONTACT:** Lisa Harvey: E-mail address: *harvey-lisa@dol.gov.* All applicants are advised that U.S. mail delivery in the Washington, DC area has been slow and erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this it not a toll free number), prior to the closing deadline. All inquiries should reference SGA 02–11. See Section III.B for further information.

**SUPPLEMENTARY INFORMATION:** ILAB's Office of Foreign Relations (OFR) carries out a worldwide international technical assistance program in support of three objectives: (1) Expanding Economic Opportunity and Income Security for Workers; (2) Protecting the Basic Rights of Workers; and (3) Reducing the Prevalence of HIV/AIDS through Workplace Education. This SGA seeks one or more eligible and qualified organizations to develop and implement projects supporting objective three, reducing the prevalence of HIV/AIDS

[1] It has been widely recognized that the success of any HIV/AIDS prevention education project is greatly enhanced by including information on sexually transmitted infections (STI), and tuberculosis (TB). Although the term ''HIV/AIDS'' will be used throughout this **Federal Register** Notice, it is expected that the issues of STI and TB will be addressed within the context of the application and implementation of the program.

through workplace education. ILAB announces the availability of funds to be granted by cooperative agreement to one or more qualifying organizations to achieve the USDOL HIV/AIDS program objectives to: (1) Reduce the spread of human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) and (2) eliminate discrimination in employment against individuals infected with HIV/AIDS through a global workplace prevention and education program. The cooperative agreement(s) will also include a pilot project aimed at improving the workforce development capacity in Malawi for young adults affected by HIV/AIDS. As young adults enter the workforce, many remain unaware of accurate information regarding methods of HIV/AIDS/STI/TB infections. Considering the need for skilled workers in future years, USDOL is proposing to fund through this program a pilot-project aimed at strengthening existing local institutions which provide young adults affected by HIV/AIDS with income generating skills, HIV/AIDS prevention information and care and support services. The project also will target the growing numbers of young people who are subject to increasing pressure to leave school and work to care for sick parents and younger siblings, becoming heads of households at an early age.

The cooperative agreement(s) is to be actively managed by ILAB's Office of Foreign Relations to assure achievement of the stated objectives. Applicants are encouraged to be creative in proposing innovative and cost-effective interventions that will have a demonstrable impact on the HIV/AIDS infection rate and the level of discrimination in employment against individuals infected with HIV/AIDS.

## I. Background and Program Scope

### *A. The International HIV/AIDS Pandemic*

According to UNAIDS,[2] more than 60 million people have been infected with the HIV/AIDS virus, since the epidemic began. HIV/AIDS is now the leading cause of death in sub-Saharan Africa. In many parts of the developing world, the majority of new infections occur in young adults, with young women especially vulnerable. About one-third of those currently living with HIV/AIDS are aged 15–24. Although HIV/AIDS was initially viewed as strictly a health crisis, it is now acknowledged to have a severe impact on the economic and social development of the affected countries.

Recent studies on HIV/AIDS in the workforce warn of the catastrophic consequences of HIV/AIDS/STI/TB for workers and employers worldwide, projecting a severe decline in the size and quality of the workforce in a number of countries over the next 20 years. Countries with the most infected populations in sub-Saharan Africa could lose 29–35% of their total labor force by 2020. Due to the disproportionate effect of HIV/AIDS on the 15–49 year age group, the most economically active segment of society is affected most severely. Moreover, the stigma and discrimination that surround those suffering from the disease contribute to the high prevalence rate by perpetuating misinformation and preventing people from seeking help. As a result, the International Labor Organization estimates that in the case of countries with HIV prevalence rates higher than 10% of the adult population, the labor force in the year 2020 will be an estimated 10–22% smaller than it would have been if there had been no HIV/AIDS. The impact has already eradicated the small gains in economic growth and stability that some sub-Saharan African countries had experienced.

The severity of the AIDS pandemic is generating orphans so quickly that family structures can no longer cope. Traditional safety nets are unraveling as more young adults die of AIDS related illnesses. Typically, half of the people with HIV become infected before they turn 25, acquiring AIDS and dying by the time they turn 35, leaving behind a generation of children to be raised by their grandparents or left on their own in child-headed households. More than 12,100,000 children have been orphaned by AIDS in Africa, accounting for more than 95% of the world's AIDS' orphan population. The extended family network in sub-Saharan Africa is an age-old social safety net for such children, which has long proved itself resilient even to major social changes. Capacity and resources, however, are now stretched to the breaking point. Those providing the necessary care in many cases are already impoverished, leaving behind vulnerable children and young adults who are forced to leave school to fend for themselves and often become child heads of households. The crisis directly impacts the workforce of the future.[3]

[2] The Joint United Nation's Program on HIV/AIDS.

[3] AIDS Epidemic: Update 2000 and Report on the Global HIV/AIDS Epidemic, June 2000: UNAIDS, Joint Program on HIV/AIDS; Children Orphaned by AIDS, UNICEF, December 1999.

## II. Authority

USDOL is authorized to award and administer this program by the Department of Labor, Health and Human Services and Education, and Related Agencies Appropriations Act, 2002, Pub. L. 107–116, 115 Stat. 2177 (2001).

## III. Application Process

### *A. Eligible Applicants*

Any commercial, international, or non-profit organization capable of successfully implementing HIV/AIDS workplace prevention and education programs on a global scale, and successfully working with labor ministries, employers and labor groups to reduce the spread of HIV/AIDS and help eliminate discrimination in employment relating to HIV/AIDS is eligible for this cooperative agreement. Partnerships of more than one organization are also eligible, although in such a case a lead organization must be identified. The capability of an applicant and partners and co-applicants to perform necessary aspects of this solicitation will be determined under Section V.B Rating Criteria.

Please Note That Eligible Cooperative Agreement Applicants Must Not be Classified Under The Internal Revenue Code as a Section 501(c)(4) Entity. *See* 26 U.S.C. 501(c)(4). According to section 18 of the Lobbying Disclosure Act of 1995, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

### *B. Submission of Applications*

One (1) ink-signed original, complete application plus two (2) copies of the proposal must be submitted to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW, Room N–5416, Washington, DC 20210, not later than 4:45 p.m. EDT, August 27, 2002. To aid with review of applications, USDOL also encourages applicants to submit two additional paper copies of the application (five total). Applicants who do not provide additional copies will not be penalized.

The application must consist of two (2) separate parts. Part I of the application must contain the Standard Form (SF) 424, ''Application for Federal Assistance'' (Appendix A) (The entry on SF 424 for the Catalog of Federal Domestic Assistance Number (CFDA) is 17.700) and sections A–F of the Budget Information Form SF 424A (Appendix B). Part II must contain a technical

proposal that demonstrates capabilities in accordance with the Statement of Work and the selection criteria.

To be considered *responsive* to this solicitation, the application must consist of the above-mentioned separate sections not to exceed 40 single-sided (8½″ × 11″), double-spaced, 10 to 12 pitch typed pages for which a response is submitted. *Any Applications That do Not Conform to These Standards May be Deemed Non-Responsive to This Solicitation and May Not be Evaluated.* Standard forms and attachments are not included in the page limit. The application must include a table of contents and an abstract summarizing the application in not more than two (2) pages. These pages are also *not* included in the page limits.

Upon completion of negotiations, the individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant.

*C. Acceptable Methods of Submission*

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services after 4:45 pm ET August 27, 2002, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before August 27, 2002;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 pm at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to August 27, 2002.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted, however, the applicant bears the responsibility for timely submission. Because of delay in the receipt of mail in the Washington, DC area, it is recommended that you confirm receipt of your application by contacting Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. All inquires should reference SGA 02–11.

*D. Funding Levels*

Approximately U.S. $8.3 million is budgeted for this program, to fund projects, one in West Africa (Benin, Ghana and Togo), one in the Caribbean (Guyana and Belize), and one each in Namibia, Mozambique, Cambodia and Malawi. Although USDOL reserves the right to award more than one cooperative agreement, a partnership of more than one organization may apply to implement the program. Applicants will submit one application for the implementation of all six projects and are encouraged to utilize local NGO's to implement much of the program in order to institutionalize and sustain project improvements and reduce costs. The award of any sub-contract to a local NGO will be subject to USDOL approval (See Section B above).

*E. Program Duration*

The duration of the project(s) funded by this SGA is four (4) years. The start date of project activities will be negotiated upon the awarding of the cooperative agreement.

**IV. Requirements**

*A. Statement of Work*

In developing their proposals, potential cooperative agreement recipients should develop a strategy for implementation of the project objectives to reduce the spread of human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) and eliminate discrimination in employment against individuals infected with HIV/AIDS/STI/TB through a global workplace prevention and education program. The strategy should take into account the implementing environment in the selected countries and incorporate innovative methodologies for targeting employers and employees. The strategy should also demonstrate how the applicant proposes to involve employer organizations, labor organizations, and Ministries of Labor in the implementation of the project. The applicant should draft a strategy demonstrating how it will meet the project objectives by the end of the grant period, and how the issue of sustainability will be integral to project implementation. The applicant must present a strategy to demonstrate that 80% of the target group exhibits an awareness of accurate information regarding HIV/AIDS/STI/TB prevention and methods of infection; at least 50% of the target group undertakes responsible behavior at the conclusion of the grant; and 60% of targeted employers have developed and implemented workplace policies aimed at decreasing discriminatory workplace practices in both public and private sectors.

The applicant should include a basis on which the target groups will be established (e.g. target industries, regions or age groups), outline the information, education, and communication (IEC) materials that will be used as well as a strategy for translating HIV/AIDS/STI/TB awareness to responsible behavior change. The strategy should seek to reduce the stigma of HIV/AIDS at the national, enterprise and community level. In addition, the applicant should develop sustainable innovative strategies for involving government, employers' and workers' organizations, and nongovernmental organizations, as appropriate, in the development, implementation and enforcement of appropriate workplace policies at the national and enterprise levels aimed at decreasing discriminatory workplace practices in both public and private sectors; and help ensure that at least 60% of targeted enterprises have such workplace policies and practices in place by the end of the grant period.

*Workforce Development for Young Adults Affected by HIV/AIDS/STI/TB in Malawi*

The applicant should reflect an understanding of the challenges facing Malawi with regard to workforce development and HIV/AIDS/STI/TB. The applicants will develop an approach that will meet the overall development needs of the identified target beneficiaries in order to facilitate entrance of skilled workers into the workforce. The applicant will propose innovative and cost-effective strategies working through existing local institutions to support the following objectives: (1) Enable young adults affected by HIV/AIDS to obtain job skills training and follow-up assistance with income generation; (2) Mobilize a wide array of stakeholders to improve and expand the workforce training infrastructure; (3) Encourage responsible behavior change through increased awareness and correct knowledge of HIV/AIDS/STI/TB and methods of infection among the target population; and (4) Provide psychosocial support for the identified target group. The application should also incorporate a strategy for collaborating with other donors to assist in the long-term sustainability of these efforts and illustrate methods for innovative behavior change interventions, as well as including young women in the workforce target group, with a framework for providing an enabling environment for women to obtain income generating skills.

The organization awarded the cooperative agreement(s) (hereinafter referred to as the ''grantee'') will be required to work cooperatively with stakeholders in the countries, including Ministries/Departments of Education and Labor, trade unions, employer organizations, and other relevant partners to identify the number and location of target groups, gather and correlate knowledge, attitude, and behavior survey data, and assess level of capacity and infrastructure of targeted groups and geographic locations.

*B. Deliverables*

Following the award of the cooperative agreement(s), unless otherwise indicated, the applicant must submit copies of all required reports to USDOL by the specified due dates. Other documents, such as project designs, are to be submitted by mutually agreed-upon deadlines.

1. Project Designs. The grantee(s) will travel to each country with USDOL officials on a project design mission trip, draft the design, and submit a project document in the format established by USDOL, to include a background/justification section, project strategy (objectives, outputs, activities, indicators), project implementation timetable, project management organizational chart, project budget, logical framework and performance monitoring plan to systematically monitor project results. The document will also include sections, which cover coordination strategies, project management, and sustainability of project improvements involving government, employers' and workers' organizations as well as other nongovernmental organizations as appropriate. Each project design will be drawn, in part, from the proposal written in response to this solicitation.

2. Trip Reports. Within ten (10) days of the conclusion of each field mission, a two-page trip report (exclusive of contact information) will be submitted to USDOL, including purpose of trip, places and dates, list of meetings, site visits, problems encountered, accomplishments, next steps, and an appendix of names and contact information of persons met.

3. Technical Progress Reports. The grantee(s) must furnish a typed technical report to USDOL on a quarterly basis, no later than 15 days from the last date of each quarter, *e.g.,* 31 March, 30 June, 30 September and 31 December of each year. The second and fourth quarter reports are abbreviated and need only indicate whether the work plan was fully implemented and if not, explain why not and attach the amended work plan. The grantee(s) must also furnish a separate financial report (SF 242) to USDOL on the same quarterly basis. The format for the technical progress report will be the standard format developed by USDOL and must contain the following information:

a. For each project objective, an accurate account of activities carried out under that objective during the reporting period as it relates to the work plan;

b. Major trends in the project that note particular success with a particular activity or trends that indicate a need to re-adjust or expand the work plan;

c. An account of problems, proposed solutions, actions taken or required regarding implementation of the project;

d. New proposals for activities, staffing, funding, etc;

e. Lessons learned in project implementation;

f. Future actions planned in support of each project objective;

g. An accounting of staff and any sub-contractor hours expended;

h. Expenditures vs. Budget;

i. An accounting of travel performed under the cooperative agreement during the reporting period, including purpose of trip, persons or organizations contacted, and benefits derived; and

j. Aggregate amount of costs incurred during the reporting period.

4. *Annual Work Plan.* An annual work plan for each project will be submitted within 45 days after the approval of the project design by USDOL. Subsequent annual work plans will be delivered as and when amended to reflect modifications in implementation, no later than one year following submission of previous work plan; or to reflect amendments based on recommendations made during mid-term evaluations, no later than 30 days following the mid-term evaluation.

5. *Monitoring and Evaluation.* A performance monitoring plan will be developed in collaboration with USDOL, including beginning and ending dates for projects, planned and actual dates for mid-term and final project evaluations and included as part of the submission of the project document for USDOL approval. The monitoring plan will be prepared after completion of baseline surveys, including revision of indicators provided in project documents. The plan will include performance indicators and instruments to collect and report on performance data on a semi-annual basis.

6. *Evaluation Reports.* The Grant Officer's Technical Representative (GOTR) will determine on a case-by-case basis whether mid-term evaluations will be conducted by an internal or external evaluation team. All final evaluations will be external in nature. The grantee(s) must respond to any comments and recommendations resulting from the review of the mid-term report and will submit a work plan for implementing the recommendations of the mid-term report within 15 days following formal submission of the report to the grantee(s) by USDOL.

*C. Production of Deliverables*

*Materials Prepared and Purchased Under the Cooperative Agreement.* The grantee(s) must submit to USDOL all media-related and educational materials developed under this cooperative agreement(s), including relevant press releases, for use in this project(s) before they are reproduced, published, or used. The grantee(s) must consult with USDOL to ensure that materials are compatible with USDOL materials relating to the program, e.g., public relations material such as video and web site. USDOL considers brochures,

pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the program, educational materials. USDOL will review materials for technical accuracy. USDOL will also review training curricula and purchased training materials for accuracy before they are used. The grantee(s) must obtain prior approval from the Grant Officer for all materials developed or purchased under this cooperative agreement(s). All materials produced by grantee(s) must be provided to USDOL in a digital format for possible publication on the Internet by USDOL.

*Acknowledgment of USDOL Funding.* In all circumstances, the following must be displayed on printed materials:

''Preparation of this item was funded by the United States Department of Labor under Cooperative Agreement No. [insert the appropriate cooperative agreement number].

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including State and local governments and recipients of research grants, must clearly state:

a. The percentage of the total costs of the program or project, which will be financed with Federal money;

b. The dollar amount of Federal funds for the project or program; and

c. The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

In consultation with USDOL, identification of USDOL's role will be determined to be one of the following:

a. The USDOL logo may be applied to USDOL-funded material prepared for world-wide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. The grantee(s) will consult with USDOL on whether the logo should be used on any such items prior to final draft or final preparation for distribution. In no event shall the USDOL logo be placed on any item until USDOL has given the grantee written permission to use the logo, after obtaining appropriate internal USDOL approval for use of the logo on the item.

b. If the USDOL determines the logo is not appropriate and does not give written permission, the following notice must appear on the document:

''This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.''

*D. Administrative Requirements*

1. *General.* Grantee organizations will be subject to applicable Federal laws (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, *e.g.* Non-Profit Organizations—OMB Circular A–122. The cooperative agreement(s) awarded under this SGA will be subject to the following administrative standards and provisions, if applicable:

29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

29 CFR Part 93—New Restrictions on Lobbying.

29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR Part 98—Federal Standards for Government wide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

29 CRF Part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

1. *Sub-contracts.* Sub-contracts and contracts must be awarded in accordance with 29 CFR 95.40–48. In compliance with Executive Orders 12876 as amended, 13230, 12928, 13021 as amended and 13198 as amended, the grantee(s) is strongly encouraged to provide sub-contracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions and Tribal Colleges and Universities.

2. *Key Personnel.* The applicant must list the individual(s) who has (have) been designated as having primary responsibility for the conduct and completion of all work in project(s) it proposes. The grantee(s) agrees to inform the GOTR whenever it appears impossible for one or more of these individual(s) to continue work on the project as planned. The grantee(s) may nominate substitute personnel for approval of the GOTR; however, the grantee(s) must obtain prior approval from the Grant Officer for all key personnel. If the Grant Officer determines not to approve the personnel change, he/she reserves the right to terminate the cooperative agreement.

3. *Encumbrance of Cooperative Agreement Funds.* Cooperative agreement funds may not be encumbered/obligated by the grantee(s) before or after the cooperative agreement period of performance. Encumbrances/obligations outstanding as of the end of the cooperative agreement period may be liquidated (paid out) after the end of the cooperative agreement period. Such encumbrances/obligations may involve only commitments for which a need existed during the cooperative agreement period and which are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the grantee(s)'s purchasing procedures and incurred within the cooperative agreement period. All encumbrances/obligations incurred during the cooperative agreement period must be liquidated within 90 days after the end of the cooperative agreement period, if practicable.

5. *Site Visits.* USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of the grantee(s) or a sub-contractor(s) under this cooperative agreement(s), the grantee(s) must provide and must require its sub-contractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations must be performed in such a manner as will not unduly delay the work.

## V. Review and Selection of Applications for Cooperative Agreement Award

*A. The Review Process*

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable. A technical panel will objectively rate each complete application against the criteria described in this announcement. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select one or more

grantees on the basis of the initial proposal submission; or, the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of proposals, the evaluation process described above will be repeated to consider such revisions. The Grant Officer will make a final selection determination based on what is most advantageous to the Government, considering factors such as panel findings, geographic presence of the applicants, and the availability of funds. The Grant Officer's determination for award under this SGA 02–11 is final.

**Notice:** Selection of an organization as a cooperative agreement recipient does not constitute approval of the cooperative agreement application as submitted. Before the actual cooperative agreement is awarded, the Grant Officer will enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the proposal.

*B. Rating Criteria and Selection*

The technical panel will review applicants against the criteria listed below on the basis of 100 points with up to additional five points available for non-federal or leveraged resources.

The criteria are presented in the order of emphasis that they will receive.

1. *Approach, Understanding of the Issue, and Budget Plan (50 points).*

a. *Overview.* This section of the proposal must explain the strategy employed by the applicant to achieve the following results:

(1) The applicant's proposed method for demonstrating that 80% of the targeted population exhibits knowledge of accurate information regarding HIV/AIDS/STI/TB prevention and methods of infection;

(2) The applicant's proposed method for achieving responsible behavior among 50% of the targeted population in support of reducing the spread of the HIV/AIDS virus;

(3) Development and implementation of workplace policies designed to reduce discrimination of HIV/AIDS infected workers in 60% of targeted worksites; and

(4) The other expected outcomes over the period of performance for each of the tasks.

The applicant must describe in detail the proposed approach to comply with each requirement in Section IV.A of this solicitation, including all tasks and methods to be utilized to implement the project. Also, the applicant must explain the rationale for using this approach. In addition, this section of the proposal must demonstrate the applicant's thorough knowledge and understanding of the impact of HIV/AIDS on the workplace, best-practice solutions to the problem, working with the tripartite partners, and work that has been done in the field as applied to the country or countries that are the focus of this program.

b. *Logical Framework* The strategy should include an outline of the objectives, activities and indicators envisioned for implementation of the program.

c. *Implementation Plan* The applicant must submit an implementation plan for the entire program, preferably with a visual such as a Gantt chart. The implementation plan should outline the approach that will be used to implement the program. The plan should list the activities envisioned for the life of the program as well as scheduling of activities by objective starting with the execution of the cooperative agreement and ending with the final report. In describing the implementation plan, the applicant must address the following points:

(1) Describe the use of existing or potential infrastructure and use of qualified personnel, including qualified nationals, to implement the projects in West Africa (Benin, Ghana and Togo), the Caribbean (Guyana and Belize), Namibia, Mozambique, Cambodia and Malawi. One chart for the entire program is acceptable if the approach will be uniform in all project countries. The applicant also must include a project organizational chart, demonstrating management structure, key personnel positions and indicating proposed links with the relevant Government ministries, employer organizations, trade unions and other significant local actors.

(2) Develop a list of activities and explain how each relates to the overall development objective of reducing the rate of HIV/AIDS infection through workplace prevention and education programs and creating a supportive workplace environment for people living with HIV/AIDS.

(3) Explain how appropriate IEC materials and training curriculum will be developed.

(4) Explain the strategy for providing HIV/AIDS prevention and education program in the workplace. Outline how the tripartite partners will be involved in the implementation of this component.

(5) Explain the strategy for assisting business and labor to develop appropriate workplace policy statements to address issues stemming from the stigma and discrimination associated with HIV/AIDS.

(6) Demonstrate how the applicant will strengthen national institutions and policies on HIV/AIDS and discrimination in the workplace.

(7) Demonstrate how the applicant will systematically report on project performance to measure the achievement of the project objective(s).

(8) Demonstrate how the applicant will build the national and local capacity to ensure that project efforts to reduce the incidence of HIV/AIDS in the workplace are sustained after completion of the project.

(9) For Malawi only, describe the strategy to expand access to job skills training and employment for young adults affected by HIV/AIDS, work with local stakeholders to address the needs of young adults affected by HIV/AIDS in the workforce and prepare an HIV/AIDS prevention program for the target population in Malawi that results in responsible behavior change among the targeted population.

d. *Management and Staff Loading Plan.* The management plan must also include a management and staff loading plan. The management plan should include the following:

(1) A project organization chart and accompanying narrative which differentiates between elements of the applicant's staff and sub-contractors or consultants who will be retained;

(2) A description of the functional relationship between elements of the project's organization; and (3)The identity of the individual responsible for project management and the lines of authority between this individual and other elements of the project.

The staff loading plan must identify all key tasks and the person-days required to complete each task. Labor estimates for each task must be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks must be charted to show time required to perform them by months or weeks.

This section will be evaluated in accordance with applicable Federal laws and regulations. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars) and with ILAB budget requirements contained in the application instructions in Section III of this solicitation.

e. *Budget Plan* The applicant must develop one proposed budget for implementation of projects in all six

countries. This section of the application must explain the costs for performing all of the requirements presented in this solicitation and for producing all required reports and other deliverables presented in this solicitation; costs must include labor, training, material production and dissemination, equipment, travel and other related costs. The budget plan will be evaluated solely for the purpose of determining the efficient and effective allocation of funding for proposed program implementation. Preference may be given to applicants with low administrative costs. Administrative costs shall be reflected separately on the budget plan from programmatic costs.

2. *Experience and Qualifications of the Applicant (25 points)*

The evaluation criteria in this category are as follows:

a. The applicant, including any partners or co-applicants, must demonstrate experience with HIV/AIDS/STI/TB prevention; working directly with government Ministries, employers' organizations, trade unionists and other local organizations e.g. community based or faith based groups; analyzing labor law relating to discrimination; developing workplace policy statements addressing issues relating to discrimination; and implementing workplace education programs either in the country or countries in which it proposes project(s) or that it has broad experience of working with such entities, with experience in the above areas. Organizations applying in partnership or as co-applicants must submit a signed letter of agreement between the parties verifying the intention of the parties to work together to implement the program. The partnership agreement must include a designation for the lead organization.

b. The capability of the applicant(s) for the workforce development project may be demonstrated by one or more staff members assigned to oversee the project with experience in the following area:

(1) Workforce Development or Human Capacity Development;

(2) Coordinating with the Ministries of Labor and Education, Employer Organizations, non-governmental organizations and Trade Union officials; and

(3) Providing HIV/AIDS prevention and HIV/AIDS psychosocial services to young adults.

c. The applicant(s) must also demonstrate either that it has an international system of operations either by affiliates or by agreement in the regions identified in Section I.B or that it has an effective system of operations in each designated country. These contacts must enable the applicant(s) to demonstrate that it can perform in the above-mentioned countries.

d. The applicant must include information regarding previous grants, contracts or cooperative agreements. This information must include:

(1) The organization for whom the work was done;

(2) A contact person in that organization with his/her current phone number;

(3) The dollar value of the grant, contract or cooperative agreement for the project(s);

(4) The time frame and professional effort involved in the project(s);

(5) A brief summary of the work performed; and

(6) A brief summary of accomplishments.

This information on previous grants and contracts shall be provided in appendices and will *not* count in the 40-page maximum page requirement.

3. *Experience and Qualifications of Key Personnel (25 points)*

This section of the application must include sufficient information for judging the quality and the competence of key staff proposed to be assigned to the project(s) proposed to assure that they meet the required qualifications. Successful performance of the proposed work depends heavily on the qualifications of the individuals committed to the program. Accordingly, in its evaluation of the applicant's proposal, USDOL will place emphasis on the applicant's commitment of key personnel qualified for the work involved in accomplishing the assigned tasks. Information provided on the experience and educational background of personnel must indicate the following:

a. The identity of key personnel assigned to the project. ''Key personnel'' are staff who are essential to the successful operation of the project and completion of the proposed work and, therefore, may not be replaced or have their hours reduced without the approval of the Grant Officer.

b. The educational background and experience of all staff to be assigned to the project.

c. The special capabilities of staff that demonstrate prior experience in organizing, managing and performing similar efforts.

d. The current employment status of staff and availability for this project. The applicant must also indicate whether the proposed work will be performed by persons currently employed or is dependent upon planned recruitment or sub-contracting.

Note that management and professional technical staff members comprising the applicant's proposed team should be individuals who have prior experience with organizations working in similar efforts, and are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance is proposed, organizational control should be clearly delineated to ensure responsiveness to the needs of USDOL. Key personnel must sign letters of agreement to serve on the project, and indicate availability to commence work within three weeks of grant award. The following information must be furnished:

a. The applicant must designate a Program Director to oversee the project(s) and other key personnel to perform the requirements for the International HIV/AIDS Workplace Education Program and Malawi workforce development program for young adults affected by HIV/AIDS. The Program Director must have a minimum of three years of professional experience in a leadership role in implementation of complex HIV/AIDS/STI/TB prevention and education programs in developing countries in areas such as behavior change intervention, development of IEC materials, HIV/AIDS policy development, and monitoring and evaluation of HIV/AIDS projects.

b. The applicant should specify other personnel proposed to carry out the requirements of this solicitation.

c. An organization chart showing the applicant's proposed organizational structure for performing task requirements for the project(s) proposed, along with a description of the roles and responsibilities of all key personnel proposed for this project(s). The chart should also differentiate between elements of the applicant's staff and sub-contractors or consultants who will be retained.

d. The applicant must identify all key tasks and the person-days required to complete each task. Labor estimates for each task must be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks must be charted to show time required to perform them by months or weeks.

e. A resume for each of the key personnel to be assigned to the program. At a minimum, each resume must include: the individual's current employment status and previous work experience, including position title, duties performed, dates in position, employing organizations and educational background. Duties must be

clearly defined in terms of role performed, *e.g.,* manager, team leader, consultant, etc. (Resumes must be included as attachments, which do not count against the page limitation).

f. The special capabilities of staff that demonstrate prior experience in organization, managing and performing similar efforts.

g. The current employment status of key personnel proposed for work under the cooperative agreement, *e.g.,* whether personnel are currently employed by the organization or whether their employment depends upon planned recruitment or sub-contracting. Note that the key management and professional technical staff members comprising the applicant's proposed team must be individuals who have prior experience with organizations working in similar efforts, and must be fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance are proposed, organizational control must be clearly delineated to ensure responsiveness to the needs of the USDOL.

5. *Leveraging of Funding (5 points).* We will give up to five (5) additional rating points to applications that include non-Federal resources that significantly expand the dollar amount, size and scope of the proposal. The applicant may include any leveraging or co-funding anticipated. To be eligible for additional points under this criterion, the applicant must list the source(s) of funds, the nature, and activities anticipated with these funds under this cooperative agreement, and any partnerships, linkages or coordination of activities, and/or cooperative funding.

This stated commitment will be incorporated into the text of the cooperative agreement with the selected applicant(s).

Signed at Washington, DC, this 20th day of June, 2002.

**Lawrence J. Kuss,**

*Grant Officer.*

**Attachments:**

**Appendix A: SF 424—Application Form**

**Appendix B: Budget Information Sheet**

BILLING CODE 4510–28–P

Appendix A: SF 424 - Application Form.

**APPLICATION FOR FEDERAL ASSISTANCE**

**APPENDIX AA@**

OMB Approval No. 0348-0043

| | | | |
|---|---|---|---|
| | | 2. DATE SUBMITTED | Applicant Identifier |
| 1. TYPE OF SUBMISSION:<br>Application ~ Preapplication<br>~ Construction ~ Construction<br>~ Non-Construction ~ Non-Construction | | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |
| 5. APPLICANT INFORMATION | | | |
| Legal Name: | | Organizational Unit: | |
| Address (give city, county, State and zip code): | | Name, telephone number and fax number of the person to be contacted on matters involving this application (give area code): | |
| 6. EMPLOYER IDENTIFICATION NUMBER (EIN):<br>GG-GGGGGGG | | 7. TYPE OF APPLICANT: (enter appropriate letter in box) G<br>A. State H Independent School Dist.<br>B. County I State Controlled Institution of Higher Learning<br>C. Municipa J . Private University<br>D. Township K Indian Tribe<br>E. Interstate L. Individual<br>F. Intermunicipal M. Profit Organization<br>G. Special District N. Other (Specify): _____ | |
| 8. TYPE OF APPLICATION:<br>~ New ~ Continuation ~ Revision<br>If Revision, enter appropriate letter(s) in box(es): G G<br>A. Increase Award B. Decrease Award C. Increase Duration<br>D. Decrease Duration Other (specify):<br>_____ | | 9. NAME OF FEDERAL AGENCY: | |
| 10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:<br>GG-GGG<br>TITLE: | | 11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: | |
| 12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.): | | | |

| 13. PROPOSED PROJECT: | | 14. CONGRESSIONAL DISTRICTS OF: | |
|---|---|---|---|
| Start Date | Ending Date | a. Applicant | b. Project |
| | | | |

| 15. ESTIMATED FUNDING: | | | 16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS? |
|---|---|---|---|
| a. Federal | $ | .00 | a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON |
| b. Applicant | $ | .00 | |
| c. State | $ | .00 | DATE _____ |
| d. Local | $ | .00 | b. NO. ~ PROGRAM IS NOT COVERED BY E.O. 12372 |
| e. Other | $ | .00 | ~ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW |
| f. Program Income | $ | .00 | 17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? |
| g. TOTAL | $ | .00 | ~ Yes If "Yes," attach an explanation. ~ No |

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
|---|---|---|
| | | |
| d. Signature of Authorized Representative | | e. Date Signed |
| | | |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)

Prescribed by OMB Circular A-102

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***APPENDIX B***

*PART II - BUDGET INFORMATION*

*SECTION A - Budget Summary by Categories*

| | (A) | (B) | (C) |
|---|---|---|---|
| *1. Personnel* | | | |
| *2. Fringe Benefits (Rate )* | | | |
| *3. Travel* | | | |
| *4. Equipment* | | | |
| *5. Supplies* | | | |
| *6. Contractual* | | | |
| *7. Other* | | | |
| *8. Total, Direct Cost (Lines 1 through 7)* | | | |
| *9. Indirect Cost (Rate %)* | | | |
| *10. Training Cost/Stipends* | | | |

| | | | |
|---|---|---|---|
| | | | |
| *11. TOTAL Funds Requested (Lines 8 through 10)* | | | |

*SECTION B - Cost Sharing/ Match Summary (if appropriate)*

| | *(A)* | *(B)* | *(C)* |
|---|---|---|---|
| *1. Cash Contribution* | | | |
| *2. In-Kind Contribution* | | | |
| *3. TOTAL Cost Sharing / Match (Rate %)* | | | |

*NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).*

*INSTRUCTIONS FOR PART II - BUDGET INFORMATION*

*SECTION A - Budget Summary by Categories*

1. *Personnel: Show salaries to be paid for project personnel which you are required to provide with W2 forms.*
2. *Fringe Benefits: Indicate the rate and amount of fringe benefits.*
3. *Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. *Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*

5. *Supplies: Include the cost of consumable supplies and materials to be used during the project period.*

6. *Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. *Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. *Total, Direct Costs: Add lines 1 through 7.*

9. *Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. *Training /Stipend Cost: (If allowable)*

11. *Total Federal funds Requested: Show total of lines 8 through 10.*

*SECTION B - Cost Sharing/Matching Summary*

*Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.*

*NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.*

[FR Doc. 02–16100 Filed 6–25–02; 8:45 am]
**BILLING CODE 4510–28–C**

## DEPARTMENT OF LABOR

### Office of Disability Employment Policy; Customized Employment Grants

**AGENCY:** Office of Disability Employment Policy (ODEP), Department of Labor.

**ACTION:** Notice of availability of funds and Solicitation for Grant Applications (SGA 02–13) for Customized Employment Grants.

**SUMMARY:** The U.S. Department of Labor (DOL or the Department), Office of Disability Employment Policy (ODEP) announces the availability of $3.5 million to award up to seven competitive grants for strategic planning and implementation activities designed to improve the employment and career advancement of people with disabilities through enhanced availability and provision of customized employment services through the new One-Stop delivery system established under the Workforce Investment Act of 1998 (WIA) (Pub. L. 105–220, 29 U.S.C. 2801 *et seq.*).

This Customized Employment Grant program will provide funds to selected Local Workforce Investment Boards (Local Boards), or, if appropriate, the WIA grant recipient or fiscal agent for the local area on behalf of the Local Board. The Local Board will be the lead entity in a consortium/partnership of public and private entities, to build the capacity in local One-Stop Centers to provide customized employment services to those persons with disabilities who may not now be regularly targeted for services by the One-Stop Center system. Grants funded under this program will also provide a vehicle for Local Boards to systemically review their policy and practices in terms of service to persons with disabilities, and to incorporate new and innovative practices, as appropriate.

Grants are for a one-year period and may be renewed for a period of up to four additional years at varying funding levels (see Section V) depending upon the availability of funds and the efficacy of the project activities. All forms necessary to prepare an application are included in this SGA. If another copy of a Standard Form is needed, go online to http://www.whitehouse.gov/OMB/grants/forms.html.

**DATES:** One (1) blue ink-signed original, complete grant application plus two (2) copies of the Technical Proposal and two (2) copies of the Cost Proposal must be submitted to the U.S. Department of Labor, Procurement Services Center, Attention Grant Officer, Reference SGA 02–13, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 p.m. Eastern Daylight Savings Time (EDST) August 12, 2002. Hand-delivered applications must be received by the Procurement Services Center by that time.

**ADDRESSES:** Applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Grant Officer, Reference SGA 02–13, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Applications will not be mailed. The **Federal Register** may be obtained from your nearest government office or library. All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570, prior to the closing deadline. [This is not a toll-free number].

#### Acceptable Methods of Submission

The application package must be received at the designated place by the date and time specified or it will *not* be considered. Any application received at the Office of Procurement Services Center after 4:45 p.m., EDST, August 12, 2002, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before August 12, 2002; or

2. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to August 12, 2002; or

3. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk place a legible hand cancellation ''bulls-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U. S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted; however, the applicant bears the responsibility of timely submission.

All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. Therefore, it is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570, (this is not a toll-free number), prior to the closing deadline. Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339.

**SUPPLEMENTARY INFORMATION**

#### I. Authority

Consolidated Appropriations Act, 2001, Pub. L. 106–554, 114 Stat. 2763, A–10, 29 U.S.C. 557(b); DOL, HHS, Education & Related Agencies Appropriations Act, 2002, Pub. L. 107–116, 115 Stat. 2177.

#### II. Background

The President's New Freedom Initiative is designed to increase the number of people with disabilities who enter, reenter, and remain in the workforce. It is dedicated to increasing investment in and access to assistive technologies, a quality education, and increasing the integration of Americans with disabilities into the workforce and community life. The Workforce Investment Act of 1998 (WIA) provides the infrastructure for streamlining services and securing employment through the One-Stop delivery system. WIA requires multiple programs and agencies (including state Vocational Rehabilitation agencies) to: (a) Form

partnerships in this effort; (b) share expertise and coordinate resources; and (c) provide services to assist people in gaining and retaining employment. The One-Stop Career Centers which comprise this system are in a position to expand employment opportunities for people with disabilities, thus ensuring that the intent of the New Freedom Initiative is accomplished. Under WIA, collaboration with multiple required partners[1] is intended to create a coordinated and streamlined system for the customer seeking employment. It is essential to involve additional states or local programs as partners with the One-Stop Center to enable many people with disabilities to have an increased opportunity for and choice in employment. These additional programs include, but are not limited to, state programs for Mental Retardation and Developmental Disabilities, Medicaid, Mental Health and Transportation; State Councils for Developmental Disabilities; state assistive technology programs, Small Business Development Centers and secondary education programs. While not required partners under WIA, these programs have expertise and/or resources that can contribute to expanding the employment and business opportunities for people with disabilities. In addition, community colleges, University Centers for Excellence in Developmental Disabilities, business incubators, lending institutions, foundations, faith-based organizations, and other state or local programs may also be critical partners. These agencies and programs may not be informed about the potential for coordinating resources and expertise with Local Boards and One-Stop Centers in order to increase employment, choice and wages for people with disabilities.

In addition, One-Stop Centers may elect to become employment networks under the Ticket-to-Work Program (42 U.S.C. 1320b–19), thus making it more likely that they will require expertise in customized employment strategies in order to successfully facilitate employment for people with disabilities who are recipients of Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). The Ticket-to-Work is providing increased employment opportunities for people with disabilities who receive SSI and/or SSDI benefits by addressing some of the major barriers encountered by these individuals as they attempt to gain or regain employment. Approximately eight million people with disabilities receive SSI and/or SSDI benefits. According to the U.S. General Accounting Office, less than one percent of these individuals leave the rolls each year as a result of paid employment. Of those who do leave, about one-third return within three years. The Ticket-to-Work program provides a variety of work incentives, including greater choices of needed employment services, the continuation of Medicare eligibility for SSDI recipients and, at state option, health coverage under the Medicaid program to certain workers with disabilities, either by permitting them to purchase Medicaid coverage or by extending Medicaid eligibility to them without charge. As a result, there is unprecedented opportunity for these individuals to enter, or return to the workforce. Increasing numbers of individuals with disabilities will be approaching their local One-Stop Centers for assistance.

Many strategies exist for securing integrated, competitive employment for people with disabilities, including people who previously might have been considered ''nonfeasible'' for employment, and people who have been segregated in institutions, nursing homes, and day activity programs. Attitudes are changing about the abilities of people with significant disabilities to work in a variety of jobs, industries, and levels. Many exemplary practices and promising strategies have emerged through decades of research and demonstration projects, and through other public and private activities promoting increased choice and self-determination for people with disabilities. These include a variety of approaches such as supported employment; supported entrepreneurship; individualized job development; job carving and restructuring; use of personal agents (including individuals with disabilities and family members); development of micro-boards, micro-enterprises, cooperatives and small businesses; and use of personal budgets and other forms of individualized funding that provide choice and control to the person and promote self-determination. These and other innovations hold the promise of dramatically increasing both employment and wages for people with disabilities, in part by increasing their choices for integrated, competitive employment, business ownership, micro-enterprise development, entrepreneurship, and other employment options that were previously seldom available. An important focus of these innovations has been on providing non-stereotypical jobs that provide increased earnings, benefits, and career advancement potential for people, with significant disabilities. There is a substantial need for a sustained and coordinated initiative to build professional competency within One-Stop Centers and their partners, including service providers and employers, about the use of customized employment strategies.

Additionally there is a need to: (1) Effectively expand the availability of personal agents, job development expertise, and other strategies for achieving customized employment for people with disabilities; (2) increase the number of eligible training providers who can provide customized employment assistance; (3) provide information, technical assistance, training and strategic planning that focuses on integrating customized employment strategies into the workforce investment system; (4) develop ongoing linkages with employers and professional and business service organizations and trade associations and market to employers the abilities of people with disabilities to work in a variety of jobs; (5) coordinate all necessary employment and related supports from WIA partners and other essential programs that are not required partners under WIA; and, (6) research and demonstrate alternative methods of determining effective performance by the workforce investment system in terms of service to people with disabilities.

This SGA is designed to award strategic planning and implementation grants for customized employment to develop and/or expand the capacity of local workforce systems to provide meaningful and effective opportunity through One-Stops for all persons with disabilities addresses the first of these activities.

The U.S. Department of Labor also offers Work Incentive Grants designed to enhance service delivery throughout the National One-Stop delivery system for people with disabilities. Recognizing that the One-Stop system generally has limited capacity to serve people with disabilities in the comprehensive nature envisioned under the WIA, the Work Incentive Grant program has multiple goals which include but are not limited to: (1) Establishing the capacity for

[1] Some of the required partners are adult education and literacy activities under Title II of WIA; post-secondary vocational education activities under the Carl Perkins Act (20 U.S.C. 2301 et seq.); vocational rehabilitation programs authorized under title V of the Workforce Investment Act; welfare-to-work programs; veterans employment and training activities, community services block grant employment and training activities; U.S. Department of Housing and Urban Development employment and training activities; and activities authorized under Title V of the Older Americans Act (WIA sec. 121(b), 29 U.S.C.A. 2841(b), 20 CFR 662.200).

coordinated, seamless service delivery to this client group for the many programs and services which typically impact their entry or retention in the workforce; (2) Increasing the availability of assistive technology in One-Stop Centers; (3) Ensuring the availability of trained One-Stop staff to serve people with disabilities; (4) Assuring outreach and marketing of One-Stop services to the disability community; and (5) Establishing or expanding linkages with public and private providers of this client Work Incentive Grants were awarded in the last two fiscal years, as a continuing and on-going process of building the One-Stop infrastructure to most effectively meet the needs of customers with disabilities. The Work Incentive Grants are complementary yet distinct from the Customized Employment demonstration grants offered in this SGA. The Work Incentive Grants support systemic change through capacity building of the One-Stop infrastructure, whereas these Customized Employment Grants will serve as models of comprehensive service delivery which extends beyond WIA programs and services for individuals with disabilities who are the most disenfranchised under current service delivery systems.

This SGA is designed to develop comprehensive models of direct service delivery in the context of a One-Stop setting for individuals with disabilities with the greatest barriers to employment, many of whom have never been employed, are limited to subsidized employment, underemployed, or may be considered unable to be employed. The Customized Employment grants will involve cutting edge approaches such as use of customized employment strategies and active involvement of essential programs of both mandated and non-mandated partners of the workforce system.

**III. Purpose**

The purpose of this initiative is to maximize the capacity of, and outcomes from, One-Stop Centers and their partners to effectively serve people with disabilities through customized employment strategies, and to integrate those strategies into the policy and practice of the One-Stop and its partners in order to increase employment, choice and wages for people with disabilities.

For purposes of this solicitation the Department has chosen to specifically target the development and provision of customized employment to those people with disabilities identified in this section. However, the Department expects that once capacity for using customized employment strategies is developed or enhanced, the One-Stop Centers and their partners can expand use of these strategies to other groups of people with (and without) disabilities.

For purposes of this solicitation, the target groups are people with disabilities who are either unemployed or under-employed and are: (1) Receiving Supplementary Security Income (SSI) and/or Social Security Disability Insurance (SSDI); or (2) Participating in day programs (such as day habilitation, day activity or day health programs) or participating in facility-based or community employment and earning less than minimum wage; or (3) Participating in segregated employment and choosing to move to integrated, competitive employment; or (4) Awaiting employment services and supports following a move from a residential facility, or as part of a plan to move into a community under the Supreme Court decision in Olmstead v. L.C. by Zimring, 527 U.S. 581(1999); or (5) Transitioning from, or preparing to transition from, secondary school under a transition plan under part B of the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1400 *et seq.*), and who, without access to customized employment strategies, would likely be referred to one of the environments identified in (2), (3) or (4) above, but who prefers integrated, competitive employment or self-employment.

For purposes of this solicitation, customized employment means individualizing the employment relationship between employees and employers in ways that meet the needs of both. It is based on an individualized determination of the strengths, needs, and interests of the person with a disability, and is also designed to meet the specific needs of the employer. It may include employment developed through job carving, self-employment or entrepreneurial initiatives, or other job development or restructuring strategies that result in job responsibilities being customized and individually negotiated to fit the needs of individuals with a disability. Customized employment assumes the provision of reasonable accommodations and supports necessary for the individual to perform the functions of a job that is individually negotiated and developed

**IV. Statement of Work**

Eligible applicants for these grants are Local Workforce Investment Boards (Local Boards) or, if appropriate, the WIA grant recipient or fiscal agent for the local area on behalf of the Local Board under the Workforce Investment Act. The Local Board may enter into numerous partnerships with other public and private entities, consistent with the proposed activities of the grant.

Grantees must implement training and staff development activities and demonstration projects designed to develop organizational capacity to serve people with disabilities in One-Stop Centers. These projects must develop professional competency in customized employment strategies and serve targeted people with disabilities. Workforce investment system partners and other non-required but essential programs must be included in this effort. Grantees must integrate customized employment strategies with the existing services available through the One-Stop Center and its partners, including through demonstrating alternative methods of measuring performance within the Once-Stop environment. The result of these efforts will be an increase in employment, choice, and wages for people with disabilities through the use of customized employment, and the systemic evaluation and modification, as appropriate, of policies and practices to ensure that customized employment strategies for people with disabilities are systemically included in the services available through the One-Stop Center.

Grantees must demonstrate collaborative activities across relevant stakeholder groups, including both required and non-required One-Stop partners, persons with disabilities, their parents and other family members, advocates, employers, community rehabilitation agencies, and others as appropriate[2].

Grantees must:

1. Develop professional competency and capacity for implementing a variety of innovative and promising practices through customized employment;

2. Mobilize needed services and supports;

3. Implement systems change demonstrations; and,

4. Implement other initiatives to ensure that these innovations and promising practices become part of the menu of services available through the workforce investment system.

Grantees must develop employment opportunities in a variety of jobs, industries and at a variety of levels, including self-employment and entrepreneurship, based on the strengths, needs and desires of the

[2] These partners may become a subgroup or an advisory group of the Local Board. They may be specifically charged with coordinating funding, resources and expertise in order to increase customized employment for people with disabilities in the community.

individual with a disability. They must organize services and supports in ways that provide informed choice and promote self-determination. In addition, grantees must establish employer involvement; track and respond to customer service and satisfaction for both persons with disabilities and employers; and provide services, including follow-up services to ensure job retention and career development.

It is expected that each grantee will become a ''model'' for both the state and the Nation in terms of demonstrating effective linkages and strategies through the One-Stop Center system. These models will demonstrate successful strategies for customized employment for people with disabilities which result in increased employment and wages. Each grantee must also review policy and practice as it relates to people with disabilities, including researching alternative methods for performance accountability that are relevant to the characteristics of this population.

Grantees must pursue the following objectives:

1. Develop and implement strategic planning and implementation activities across the One-Stop required partner programs as identified in the Workforce Investment Act, (WIA sec. 121(b), 29 USCA, 2841(b) (such as Vocational Rehabilitation and others as appropriate) as well as other essential programs (such as Medicaid, Medicare, Mental Health, Transportation, Small Business Development Centers, State Councils on Developmental Disabilities, community colleges, benefits counseling and assistance programs, lending and financial institutions), whose expertise, services, and/or funds could contribute to employment services and supports needed by people with disabilities in order to secure customized employment.

2. Develop local and statewide policy initiatives to ensure that customized employment and multiple innovative strategies and promising practices become part of the menu of services available to people with disabilities including investigating alternative methods for performance accountability that consider the characteristics of the population.

3. Develop and document the increased capacity of the One-Stop system, including WIA required partners, community providers of employment services, and other essential programs, to provide customized employment for persons with disabilities. Such capacity includes enhancing collaboration between required WIA partners and building new collaborative initiatives with other essential programs.

4. Develop and document the capacity of the One-Stop system to increase the wages of people with disabilities who are currently working at less than minimum wage through the use of customized employment strategies.

5. Develop an increased understanding by One-Stop Centers' staff about health care, work incentives, benefits planning, ''tickets'' and other provisions under the Ticket-to-Work and Work Incentives Improvement Act of 1999 (42 USC 1320b–19 *et seq.*); and document increased use of these programs by the One-Stop Center and its partner programs to secure customized employment for recipients of SSI and/or SSDI who are entering the workforce or returning to work.

6. Document the increasing use of resources from a number of system partners and other essential programs, including providing individual budgets (e.g., individual training accounts/contractual services; tickets; vouchers; and other sources of individualized funding or personal funding accounts) for persons with disabilities to obtain customized employment.

7. Develop and leverage linkages with other state and local initiatives that provide services and supports for people with disabilities (including, but not limited to, state systems change efforts which promote systems improvement and comprehensive coordination; initiatives involving health care; benefits planning and assistance; housing; transportation; education; supported employment; small business development; technology-related assistance; initiatives of private foundations; and faith-based programs and others as appropriate).

8. Educate relevant stakeholders, including state and local policymakers and systems personnel, about needed changes in policy and practice in order to increase customized employment and wages for people with disabilities.

9. Organize education activities to enable customized employment and personalized supports to become available and used in local communities, including (as appropriate) activities necessary to secure adoption of the Medicaid buy-in in the state.

10. Develop ongoing linkages with employers, and their professional business and service organizations and trade associations as appropriate;

11. Collaborate with the national technical assistance cooperative agreement funded by the ODEP to provide assistance and training on increasing employment for adults with disabilities.

12. Identify and pursue other activities, as appropriate, to achieving the goals of these grants.

13. Provide ongoing evaluation of project activities.

Funds must be used in a flexible manner, as determined appropriate by input from stakeholders and identified needs. However, grantees must spend grant funds on activities that meet the requirements delineated in this SGA, including the requirements for outcome and evaluation data. Moreover, the grantee must adhere to the allowable cost and administrative requirements of Federal statutes, regulations, administrative requirements, and OMB Circulars. Activities may include the following:

1. Necessary staffing across agencies to implement grantee activities and otherwise demonstrate effective partnerships and interactions necessary to effectively leverage resources and expertise from partnering systems and programs.

2. Outreach to relevant stakeholders.

3. Strategic planning.

4. Demonstration activities which provide methods to increase the employment, choice, and earning potential of people with disabilities that are designed for systemic inclusion (including but not limited to demonstrating the use of individual training accounts or contractual services, tickets, and individual budgeting initiatives; economic stimulus activities including low-interest loans for person-centered micro-boards focused on increasing economic prosperity for specific individuals with disabilities; entrepreneurial employment initiatives that are consumer-owned or operated; demonstrations of innovation and cutting-edge strategies providing personal control, choice and customized assistance resulting in employment, including business ownership, micro-enterprise development or development of cooperatives for persons with disabilities; and other supports needed by specific individuals with disabilities to increase choice and wages in employment).

5. Other activities necessary to address needs and achieve goals identified through strategic planning and implementation, including collection of necessary data and evaluation.

6. Collaboration with the education system, parents and families to ensure transition of young people with disabilities from school to customized employment or training, and documentation of the outcomes of such efforts.

7. Training and education activities (including training regarding Medicaid buy-in provisions and other policy implications for increasing employment through state activities) designed to further the goal of increasing customized employment for persons with disabilities. These training activities include the education of One-Stop and partner personnel; state systems personnel and policymakers; developing and disseminating educational information and materials; and otherwise promoting policy and practice to increase the wide spread community-based use of customized employment strategies and personalized supports.

8. Researching and demonstrating alternative methods of measuring WIA performance outcomes that consider the various characteristics of people with disabilities and developing demonstrations of performance measures that document new methods for measuring program effectiveness; and coordinating the availability of and access to assistive technology.

9. Establishing connections to and collaborating with other entities, including employers, lending and financial institutions, foundations, faith-based organizations, institutions of higher education, consumer and family organizations, small business development centers and others, as appropriate, to further customized employment opportunities for persons with disabilities in local communities.

10. Educating the media and the general public about successful strategies for and the benefits of securing employment for people with disabilities. This will assist in obtaining long-term support for continuation of grantee activities following completion of funding.

11. Increasing the availability of personal agents and job development personnel offering customized services through customer-controlled approaches that result in customized employment (including demonstrating effectiveness of paying family members and/or other individuals with disabilities to serve as personal agents when selected by the individual with a disability to assist in negotiating and implementing employment plans and services).

12. Assisting community providers of segregated employment services to develop integrated, competitive options for individuals with disabilities, including implementation of conversion and other organizational change initiatives conducted with segregated provider programs that wish to change their services to integrated employment.

Upon the award of a grant, grantees must begin a strategic planning and implementation process that will address multiple components of needed change. Planning, implementation and ongoing evaluation for continuous improvement are expected to be implemented from year one in recognition that dynamic planning will occur and evolve over time. By the end of year five, it is expected that a more long-term strategic plan will be in place for expanding the availability and provision of customized employment, and for systemically revising policies and practices consistent with this goal. All grantees must provide a detailed management plan for project goals, objectives and activities.

All grantees must collect and provide to the DOL information on the individuals with disabilities served under this grant who secure employment through use of customized strategies (including information on types of jobs, wages and benefits secured by specific individuals with disabilities, and other areas addressed through the linkages and networks facilitated by grant activities.) Grantees must support the travel cost associated with sending at least one representative to the annual ODEP Grantees' training conference, to be held in Washington, DC.

All grantees must agree to cooperate with an evaluation to be conducted by the Department of Labor. DOL will arrange for and conduct this evaluation of the outcomes, impacts, and accomplishments of each funded grant as a way to measure the overall effectiveness of ODEP's grant program. Grantees must agree to make available records on all parts of grant activity, including participant employment and wage data, and to provide access to personnel, as specified by the evaluator(s), under the direction of the Department. This independent evaluation is separate from the ongoing evaluation for continuous improvement required of the grantee for grant implementation.

## V. Funding Availability

The Department of Labor anticipates awarding up to seven grants with a range of between $400,000 and $750,000 each. These awards will be for a one-year period and may be renewed annually for up to four additional years for a total of five years depending upon the availability of funds and the efficacy of the grant activities, established through reviews conducted by the Department of Labor or its designee. Proposals must include budgetary information for a five-year period. The funding for Years Four and Five will be at successively lower levels, with funding during Year Four could be at up to 80 percent of third-year funds and during Year Five at 60 percent of the third years funds. Grantees are expected to use this grant as seed money to develop other public and private resources in order to ensure sustainability of grant activities following completion of the funding period.

Funds must not be used for modifying buildings or equipment for physical accessibility, although the strategic planning should address how resources will be leveraged for such purposes from other sources, as appropriate.

## VI. Eligible Applicants

Eligible applicants for these grants are restricted to Local Workforce Investment Boards (Local Boards) or, if appropriate, the WIA grant recipient or fiscal agent for the local area on behalf of the Local Board as established under the Workforce Investment Act (WIA sec.117, U.S.C.A. 2832). The Local Board may coordinate numerous partnerships with other public and private entities, consistent with proposed activities of the grant and applicable administrative requirements.

The U.S. Department of Labor encourages Local Boards to join with other State/local entities and public/private non-profit organizations. Such entities and organizations could include state programs for Vocational Rehabilitation, Mental Health, Medicaid, Mental Retardation/Developmental Disabilities, Housing and/or Transportation; State Councils on Developmental Disabilities; Protection and Advocacy Programs; University Centers for Excellence in Developmental Disabilities; institutions of higher education; Centers for Independent Living (CIL's); disability advocacy and provider organizations; organizations of parents; federally-funded disability grant entities; Small Business Development Centers; cooperatives and micro-enterprises; lending and financial institutions; training programs; media and marketing agencies; employers; foundations; grass roots community, industry, and faith-based programs; and other organizations or programs which provide or support services and/or advocacy for people with disabilities. Letters of support and commitment from these programs must be included in the Appendix of the proposal. Indian and Native American Tribal entities, or consortia of Tribes, may apply for these grants. These grants could involve coordination of services and enhancement to a One-Stop system

approach for people with disabilities in a specific Indian community or covering multiple Tribal entities which may cut across multiple States and/or workforce investment areas. Grants to Indian and Native American tribal grantees are treated differently because of sovereignty and self-governance established under the Indian Self-Determination and Education Assistance Act allowing for the government to government relationship between the Federal and Tribal Governments.

According to section 18 of the Lobbying Disclosure Act of 1995, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan. *See* 2 U.S.C. 1611; 26 U.S.C. 506(c)(4).

**VII. Application Contents**

There are three required Parts and an Appendix of the application. Requirements for each Part are provided in this application package, as are all required forms.

Part I—Project Financial Plan (Budget)
Part II—Executive Summary
Part III—Project Narrative
Appendices—Letters of Commitment/ Support, Resumes, etc.

**General Requirements**

A cover letter, one completed blue ink signed original SF 424 grant application with two (2) copies. Proposals must be submitted by the applicant only. Page limits do not apply to the Project Financial Plan, the Executive Summary, or the Appendices (assurances, resumes, bibliography or references as appropriate, and letters of support.) A font size of at least twelve (12) point is required throughout.

*Part I—Project Financial Plan (Budget)*

To be considered, applications must include a detailed financial plan which identifies by line item the budget plan designed to achieve the goals of this grant. The Project Financial Plan must contain the SF–424, Application for Federal Assistance, (Appendix A) and an SF–424A Budget Information Sheet (Appendix B). The Project Financial Plan (Budget) must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF–424 on behalf of the applicant must represent and be able to bind the responsible financial and administrative entity for a grant should that application result in an award.

*Part II—Executive Summary*

The application must contain an Executive Summary limited to no more than two (2) single-spaced, single-sided pages which are not included in the overall page limit. Each application must provide a grant synopsis which identifies the following:

1. The applicant;
2. The consortium partners; the organizations or systems they represent; and their role in grant implementation;
3. Data on people with disabilities in the area, including, to the extent it is available, information about the target group for this solicitation and other data relevant to the proposed grant;
4. The geographic service area of the Local Board;
5. The planned period of performance (projected annually through a five year cycle, assuming grant renewals awards);
6. The actions already taken by the One-Stop system in the local area to address the needs of people with disabilities, including activities related to increasing availability of customized employment and leveraging resources and expertise across non-required partners of the One-Stop Centers;
7. A brief statement of the goals of the proposal and how they will be achieved; and,
8. Assurances of commitment in support of this proposal from the fiscal agent and all partner agencies.

*Part III—Project Narrative*

The Grant Narrative should provide complete information on how the applicant will address the requirements of this SGA and is limited to no more than 75 double-spaced, single-sided, numbered pages (not including Appendices). Each application must provide, in response to the objectives of this SGA, a comprehensive strategy and implementation plan for developing capacity and providing customized employment through the One Stop system.

*Appendix—Letters of Support and/or Commitment, Resumes*

**VIII. Evaluation Criteria/Selection**

A. Evaluation Criteria: The Project Narrative should address the following evaluation elements:

1. Statement of Need (10 Points)

Applicants must include in their proposed plan the following items.

a. The current employment circumstances facing people with disabilities in the area to be served, including barriers, programs and resources, systems and activities that could be leveraged to address needed changes.

b. The number of persons with disabilities in the area who fit the other requirements of the defined target group of persons with disabilities who may be served under this grant.

c. Related issues that need to be addressed in order to develop and/or enhance capacity of the One-Stop system to use customized employment strategies to increase employment, choice and wages for persons with disabilities, including the contribution the proposed grant will make to influence systemic changes in the local workforce system.

2. Comprehensive Strategy for Strategic Planning and Implementation To Build Capacity for Customized Employment (25 points)

Applicants must include in their proposed plan the following items.

a. The technical plan to implement the purpose and objectives of this SGA to enhance the capacity of the workforce investment system to increase employment, choice and wages for persons with disabilities through the use of customized employment strategies and to ensure that such strategies are systemically included in the policy and practice of the One-Stop Center(s).

b. The plan for developing, implementing and expanding the availability and use of customized employment strategies throughout the WIA system of required partners and non-required programs.

c. The plan for how the expertise of the State Vocational Rehabilitation program will be used.

d. The plan to involve appropriate private entities, including but not limited to community-based organizations and faith-based organizations, as appropriate.

e. The plan for reaching people with disabilities and their families, including their involvement in grant design and implementation.

f. The plan for gaining support and assistance of area employers.

g. The plan for meeting the needs of individuals with disabilities from diverse cultures and/or ethnic groups.

h. The plan for expanding the use of customized employment strategies over time to:

1. All groups of persons with disabilities targeted under this solicitation; and

2. Other groups of individuals with disabilities (such as individuals who are receiving TANF benefits) following completion of the grant;

i. The plan for leveraging resources over time in order to ensure grant sustainability upon completion of funding, including the plan for implementing grant activities during years four and five at 80% and 60% funding, respectively.

j. The plan for responding to the measures by which program success will be evaluated.

k. The plan for marketing to and involving employers, and professional and business service organizations, and trade associations as appropriate.

3. Collaboration and Coordination (15 Points)

Applicants must include in their proposed plan the following items.

a. Demonstrations of support and commitment from key organizations and individuals who advocate through or on behalf of persons with disabilities to participate in this effort.

b. Demonstrations of support and commitment from One-Stop partners and non-required but essential programs.

c. Demonstrations of support from area employers and employer organizations and evidence of their interest in participating in this effort.

d. Demonstrations of support from persons with disabilities and their families for implementation of the proposed activities.

e. Commitment to cooperate with ODEP's planned technical assistance initiative in a joint effort to develop capacity and disseminate promising practices so that the national workforce system can profit from this experience.

4. Quality of Grant Personnel (15 Points)

Applicants must include in their proposed plan the following items.

a. The names and qualifications of staff and related technical experts and consultants to support the objectives of this project for grantee and key sub-contractors and consultants.

b. A resume of key staff and consultants must be included in the Appendix and must clearly indicate qualifications of each individual for designated role in project implementation.

5. Management Plan (10 Points)

Applicants must include in their proposed plan the following items.

a. A management plan adequate to achieve the objectives of the proposed grant on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing grant activities;

b. A plan demonstrating adequate procedures for ensuring feedback and continuous improvement in the operation of the proposed grant.

c. A plan demonstrating the time commitments of key grant personnel are appropriate and adequate to meet the objectives of the proposed grant.

d. How the applicant will insure that customized employment strategies become a part of the menu of services available in the local community.

6. Evaluation and Continuous Improvement (15 Points)

Applicants must include in their proposed plan the following items:

a. All grantees must agree to participate in the DOL evaluation outlined in Section IV of this SGA.

b. In addition, all grantees must implement ongoing evaluation of grant activities in order to determine the effectiveness of grant implementation efforts for continuous improvement of the grant. In determining the quality of the evaluation for continuous improvement, the Department considers the following.

1. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives and outcomes of the proposed grant.

2. The extent to which the methods of evaluation and continuous improvement are appropriate to the context within which the grant operates.

3. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the grant and will produce quantitative and qualitative data to the extent possible (including data on wages, wage changes, benefits, types of jobs, customer satisfaction, resources leveraged from partner programs, systemic changes implemented to sustain grant over time.)

4. And, the extent to which the evaluation will provide guidance about effective strategies suitable for replication in other settings.

7. Adequacy of Resources and Budget (10 Points)

Applicants must include in their proposed plan the following items.

a. The adequacy of support for grant implementation, including facilities, equipment, supplies, and other resources.

b. The extent to which the budget is adequate to support the proposed grant.

B. Selection Criteria: Acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. Grantees must comply with all applicable Federal statutes, regulations, administrative requirements and OMB Circulars. For example, the OMB circulars require, and an entity's procurement procedures must require that all procurement transactions must be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ODEP's award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

Applications will be reviewed by a panel using the criteria described in this SGA. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify applicants as potential grantees. Although the Government reserves the right to award on the basis of the initial proposal submissions, the Government may establish a competitive range, based upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The Government reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The Government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination considering factors such as:

1. Findings of the grant technical evaluation panel;

2. Geographic distribution of the competitive applications; and,

3. The Project's Financial Plan.

The submission of the same proposal from any prior year competition does not guarantee an award under this solicitation.

## IX. Reporting

The Department of Labor is responsible for ensuring the effective implementation of each competitive grant project in accordance with the provisions of this announcement, the grant agreement and other applicable administrative requirements. Applicants should assume that Department staff or their designees will conduct at least one on-site project review. In addition, all grantees will be expected to provide information on individuals with disabilities securing employment through use of customized strategies (including information on types of jobs, wages and benefits secured by specific individuals with disabilities, and other areas addressed through the linkages and networks facilitated by project activities). Grantees will be required to submit periodic financial and participation reports under the

Customized Employment grant program. Specifically, the following reports will be required:

1. Quarterly progress reports, and upon completion of the grant period a final report. The quarterly report is estimated to take ten hours during the remainder of the grant. The final report is estimated to take 20 hours. The Department will work with the grantee to identify the requirements of the various reports, which will, among other things, include measures of ongoing analysis for continuous improvement and customer satisfaction;

2. Standard Form 269, Financial Status Report Form, on a quarterly basis;

3. Final Project Report, including an assessment of project performance and outcomes achieved. This report will be submitted in hard copy and on electronic disk using a format and instructions which will be provided by the Department. A draft of the final report is due to the Department 45 days before the termination of the grant.

DOL will arrange for and conduct an independent evaluation of the outcomes, impacts, and accomplishments of each funded project. Grantees must agree to make available records on all parts of project activity, including participant employment and wage data, and to provide access to personnel, as specified by the evaluator(s), under the direction of the Department. This independent evaluation is separate from the ongoing evaluation for continuous improvement required of the grantee for project implementation.

**X. Administration Provisions**

*A. Administrative Standards and Provisions*

Applicants are strongly encouraged to read these regulations before submitting a proposal. Grants awarded under this SGA shall be subject to the following as applicable:

29 CFR Part 95—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, etc.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts, and Agreements

29 CFR Part 97—Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments

*B. Allowable Cost*

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

State and Local Government—OMB Circular A–87

Nonprofit Organizations—OMB Circular A–122

Profit-making Commercial Firms—48 CFR Part 31.

Profit will not be considered an allowable cost in any case.

*C. Grant Non-Discrimination Assurances*

As a condition of the award, the applicant will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

29 CFR Part 31—Nondiscrimination in Federally-assisted programs of the Department of Labor, effectuation of Title VI of the Civil Rights Act of 1964. (Title VI of the Civil Rights Act of 1964)

29 CFR Part 32—Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Assistance (Section 504 of the Rehabilitation Act)

29 CFR Part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. (Title IX of the Education Amendments of 1972)

29 CFR Part 37—Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA)

The applicant must attach the aforementioned assurances and certifications.

*D. Limitation on Administrative and Indirect Costs*

1. Direct Costs for administration, plus any indirect charges claimed.

2. Indirect costs claimed by the applicant must be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application.

3. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

4. Rates traceable and trackable through the State Workforce Agency's Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in grants to State Workforce Agencies.

Signed at Washington, DC this 18th day of June, 2002

**Lawrence J. Kuss**

*Grant Officer,*

APPENDIX A. Application for Federal Assistance, Form SF 424

APPENDIX B. Budget Information Sheet, Form SF 424A

APPENDIX C. Assurances and Certifications Signature Page

BILLING CODE 4510–CX–P

## APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

| 2. DATE SUBMITTED | Applicant Identifier |
|---|---|
| 3. DATE RECEIVED BY STATE | State Application Identifier |
| 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

**1. TYPE OF SUBMISSION:**

| Application | Preapplication |
|---|---|
| ☐ Construction | ☐ Construction |
| ☐ Non-Construction | ☐ Non-Construction |

**5. APPLICANT INFORMATION**

| Legal Name: | Organizational Unit: |
|---|---|
| Address *(give city, county, State, and zip code):* | Name and telephone number of person to be contacted on matters involving this application *(give area code)* |

**6. EMPLOYER IDENTIFICATION NUMBER** *(EIN):*

☐☐ — ☐☐☐☐☐☐☐

**7. TYPE OF APPLICANT:** *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

**8. TYPE OF APPLICATION:**

☐ **New** ☐ **Continuation** ☐ **Revision**

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify):*

_____

**9. NAME OF FEDERAL AGENCY:**

**10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:**

☐☐ — ☐☐☐

TITLE:

**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**

**12. AREAS AFFECTED BY PROJECT** *(Cities, Counties, States, etc.):*

| 13. PROPOSED PROJECT | | 14. CONGRESSIONAL DISTRICTS OF: | |
|---|---|---|---|
| Start Date | Ending Date | a. Applicant | b. Project |

**15. ESTIMATED FUNDING:**

| | |
|---|---|
| a. Federal | $ .00 |
| b. Applicant | $ .00 |
| c. State | $ .00 |
| d. Local | $ .00 |
| e. Other | $ .00 |
| f. Program Income | $ .00 |
| g. TOTAL | $ .00 |

**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.**

| a. Type Name of Authorized Representative | b. Title | c. Telephone Number |
|---|---|---|
| d. Signature of Authorized Representative | | e. Date Signed |

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Prescribed by OMB Circular A-102

## INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

| Item: | Entry: |
|---|---|
| 1. | Self-explanatory. |
| 2. | Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable). |
| 3. | State use only (if applicable). |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. |
| 7. | Enter the appropriate letter in the space provided. |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>-- "New" means a new assistance award.<br>-- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>-- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |
| 9. | Name of Federal agency from which assistance is being requested with this application. |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. |
| 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 13. | Self-explanatory. |
| 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |

## BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

**SECTION A - BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. Totals | | $ | $ | $ | $ | $ |

**SECTION B - BUDGET CATEGORIES**

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | (5) |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges *(sum of 6a-6h)* | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS *(sum of 6i and 6j)* | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

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Prescribed by OMB Circular A-102

| SECTION C - NON-FEDERAL RESOURCES | | | | |
|---|---|---|---|---|
| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTAL *(sum of lines 8-11)* | $ | $ | $ | $ |

| SECTION D - FORECASTED CASH NEEDS | | | | | |
|---|---|---|---|---|---|
| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
| 13. Federal | $ | $ | $ | $ | $ |
| 14. Non-Federal | | | | | |
| 15. TOTAL *(sum of lines 13 and 14)* | $ | $ | $ | $ | $ |

| SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT | | | | |
|---|---|---|---|---|
| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTAL *(sum of lines 16-19)* | $ | $ | $ | $ |

| SECTION F - OTHER BUDGET INFORMATION | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |
| 23. Remarks: | |

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**Standard Form 424A (Rev. 7-97) Page 2**

## INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary Lines 1-4 Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g)**

*For new applications*, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

*For continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** - Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Line 6a-i** - Show the totals of Lines 6a to 6h in each column.

**Line 6j** - Show the amount of indirect cost.

**Line 6k** - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

**INSTRUCTIONS FOR THE SF-424A** (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal Resources**

**Lines 8-11** Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** - Enter the contribution to be made by the applicant.

**Column (c)** - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** - Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** - Enter totals of Columns (b), (c), and (d).

**Line 12** - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** - Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** - Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** - Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16-19** - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** - Provide any other explanations or comments deemed necessary.

## ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

D. Applicant is not a 501 (c) (4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

**Please Note: This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

[FR Doc. 02–16098 Filed 6–25–02; 8:45 am]
BILLING CODE 4510–CX–C

## DEPARTMENT OF LABOR

### Office of Disability Employment Policy

### Innovative Demonstration Grants for Youth With Disabilities

**AGENCY:** Office of Disability Employment Policy, Labor.

**ACTION:** Notice of Availability of Funds and Solicitation for Grant Applications of Innovative Demonstration Grants for Youth with Disabilities (SGA 02–12).

**SUMMARY:** The U.S. Department of Labor (''DOL'' or ''Department''), Office of Disability Employment Policy (''ODEP'') announces the availability of $2.5 million to award competitive grants to fund model demonstration programs designed to enhance the capacity of youth programs working in coordination with the Workforce Investment Act (WIA) (Pub. L. 105–220, 29 U.S.C. 2801 *et seq.*) to serve youth with disabilities. Up to five competitive grants will be awarded in the range of $350,000 to $500,000. These awards are for a two-year period of performance. To be eligible, applicants must be local WIA grant recipients, fiscal agents for such grant recipients, Local Workforce Investment Boards (Local Boards), and/or competitively selected eligible youth service providers with formal agreements with such organizations.

Each grant must involve members of two specific groups in strategic planning and implementation activities: Youth with disabilities (including those with hidden disabilities such as psychiatric disabilities, substance addiction, mental retardation and learning disabilities), relevant experts in the field of young people with disabilities (such as disability organizations, researchers, policy makers, employers, family members and/or family organizations, independent living centers, or service providers). Each grant must also include a management and evaluation component. All forms necessary to prepare an application are included in this Solicitation for Grant Application (SGA.) If another copy of a Standard Form is needed, go online to *http://www.whitehouse.gov/OMB/grants/forms.html.*

**DATES:** One (1) ink-signed original, complete grant application plus two (2) copies of the Technical Proposal and two (2) copies of the Cost Proposal must be submitted to the U.S. Department of Labor, Procurement Services Center, Attention Grant Officer, Reference SGA 02–12, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 p.m., Eastern Daylight Savings Time (EDST), August 12, 2002. Hand-delivered applications must be received by the Procurement Services Center by that time.

**ADDRESSES:** Applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Grant Officer, Reference SGA 02–12, Room N–5416, 200 Constitution Ave., NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline.

*Acceptable Methods of Submission:*

The application package must be received at the designated place by the date and time specified or it will *not* be considered. Any application received at the Office of Procurement Services Center after 4:45 p.m., EDST, August 12, 2002, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before August 12, 2002; or

2. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to August 12, 2002; or

3. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk place a legible hand cancellation ''bulls-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U. S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted; however, the applicant bears the responsibility of timely submission.

All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. Therefore, it is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570, (this is not a toll-free number), prior to the closing deadline. Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. Authority

Consolidated Appropriations Act, 2001, Pub. L. 106–554, 114 Stat. 2763, A–10, 29 U.S.C. 557(b); DOL, HHS, Education & Related Agencies Appropriations Act, 2002, Pub L. 107–116, 115 Stat. 2177.

## II. Background

The President's ''New Freedom Initiative'' is designed to increase the number of people with disabilities who enter, re-enter, and remain in the workforce. This initiative is dedicated to increasing investment in, and access to, assistive technologies and expanding educational opportunities in order to increase the ability of individuals with disabilities to integrate into the workforce; and to promote increased access into the community.[1]

A key to increasing the employment of people with disabilities is to ensure that young people with disabilities are provided resources and assistance to move from school to work, as opposed to becoming dependent on welfare or other benefits programs. One way of accomplishing this is to increase the

[1] For more information about the New Freedom Initiative, go to the White House web page at *www.whitehouse.gov/news/freedominitiative.*

participation of youth with disabilities in mainstream workforce development activities under the Workforce Investment Act of 1998 (WIA).

According to the U.S. Department of Education, the national high school graduation rates (e.g. diplomas, GED, alternative certificates) for students with disabilities are below that of youth without disabilities. Nearly nine-tenths (88%) of students without disabilities graduate, compared to only 62% of youth with disabilities.[2] Moreover, students with disabilities experience a school drop out rate that is 3 times greater than that for youth without disabilities—31% vs. 11%. Youth with emotional disabilities experience an even higher drop out rate of 54%. It is estimated that only one-third of young people with disabilities who need job training receive it. Young people with disabilities also have significantly lower rates of participation in post-secondary education. Finally, the Social Security Administration has found that many young people with disabilities who enter the Supplementary Security Income (SSI)/Social Security Disability Insurance (SSDI) rolls are likely to remain on the program rolls for their entire lives.

The federal/state vocational rehabilitation system is neither large enough to serve, nor solely responsible for serving, all youth with disabilities that depart the school system. According to the U.S. Department of Education, each year approximately 500,000 young people with disabilities leave our nation's schools. Vocational rehabilitation programs are able to serve less than 40,000 of these young people with disabilities. Many of the remaining 460,000 youth with disabilities are potentially eligible for youth programs supported under WIA. One of the most significant reforms under WIA section 129(c) [29 U.S.C. 2854(c)], is the consolidation of the year-round youth program and the summer youth program into a single formula-based funding stream. Under WIA, each local workforce investment area must have a year-round youth services strategy that incorporates summer youth employment opportunities as one of ten required program elements (WIA section 129(c)(2), 20 CFR 644.410). The ten program elements reflect successful youth development approaches and focus on the following four key themes:

1. Improving educational achievement (including such elements as tutoring, study skills training, and instruction leading to secondary school completion, drop-out prevention strategies, and alternative secondary school offerings);

2. Preparing for and succeeding in employment (including summer employment opportunities, paid and unpaid work experience, and occupational skills training);

3. Supporting youth (including supportive services needs, providing adult mentoring, follow-up services, and comprehensive guidance and counseling); and

4. Offering services intended to develop the potential of young people as citizens and leaders (including leadership development opportunities.)

WIA provides a variety of work preparation programs that can assist youth with disabilities in achieving their career ambitions. The potential is great for these programs to prepare eligible youth participants with disabilities for employment. These services need to be made available to young people with disabilities. Traditionally, however, they are not recruited to participate in these programs. WIA youth service providers may not be aware of the need to serve youth with disabilities in their communities and may lack the resources to develop strong partnerships and an equitable referral/assessment system.

Moreover, vocational rehabilitation agencies, special education agencies, and other agencies serving youth with disabilities may not be aware of the potential for coordinating resources with WIA-based programs. They may also be unaware of opportunities for creating mechanisms for such programs to cooperate and support young people with disabilities.

Currently, WIA-assisted youth programs report that difficulties in identifying the number of youth with non-visible disabilities who already participate in WIA-assisted youth programs hinders the long-term success of these young people. Because the disabilities of many youth go unidentified in WIA-assisted youth programs, the rate of their failure may be higher than for those whose disabilities are evident.

The U.S. Department of Labor has determined that youth programs must be strengthened to better serve young people with disabilities. ODEP's vision incorporates providing technical assistance and support designed to assist WIA-assisted youth programs to increase the capacity of those programs to serve people with disabilities.

In order to accomplish this goal, a two-pronged approach will be used. This approach includes:

1. Awarding grants designed to demonstrate and further develop the capacity of WIA-assisted youth programs to serve youth with disabilities; and,

2. Maintaining a technical assistance program to support capacity building for various youth programs.

In combination, these activities contribute to achieving the goals of the President's ''New Freedom Initiative''.

This SGA is designed to further the first of these activities. The supporting national technical assistance program (the WIA Disability Technical Assistance Consortia for Adults and Youth) was established in October 2001 to help with the implementation of these demonstration grants.

## III. Purpose

This SGA supports model demonstration projects that develop, implement, evaluate, and disseminate new or improved approaches that generate knowledge, and promote best practices to WIA-assisted youth programs. Its purpose is to increase participation and improve results in those programs for young people with disabilities including those with hidden disabilities such as psychiatric disabilities, substance addiction, mental retardation, and learning disabilities.

For the purposes of this SGA, a youth with a disability is defined as a youth aged 14 to 21 years old who (1) has a physical or mental impairment that substantially limits one or more of his or her major life activities or; (2) has a record of such an impairment; or; (3) is regarded as having such an impairment.

The purpose of these demonstration projects is to help WIA-assisted youth programs develop their capacity to serve youth with disabilities. This capacity building will allow these programs to develop and further demonstrate strategies and techniques to increase the participation of youth with disabilities. These strategies and techniques can, in turn, serve as models for similar WIA-assisted youth programs. These projects will target youth both in- and out-of-school. As a result of these demonstrations, and associated technical assistance efforts, ODEP anticipates that all WIA-assisted youth programs will learn from and follow these examples. This should result in a system-wide increase in the successful participation of youth with disabilities in all WIA-assisted youth programs.

[2] U.S. Department of Education, National Center on Education Statistics, The Condition of Education 2000 in Brief, Jeanne H. Nathanson NCES 2001–045, Washington, DC; U.S. Government Printing Office, 2001 U.S. Department of Education, Office of Special Education and Rehabilitation Services, Twenty-second Annual Report to Congress on the Implementation of the Individuals with Disabilities Act, Washington, DC, U.S. Government Printing Office, 2000.

Included in the objectives of these model demonstration projects is a goal of building upon and enhancing the integrated youth development approach envisioned under WIA, by incorporating knowledge of best practices developed through 15 years of research from the fields of rehabilitation, special education, maternal and child health, school-to-work, and youth development as discussed in Section IV of this SGA.

Projects are required to collaborate with the WIA Disability Technical Assistance Consortia for Adults and Youth (described above in the Background Section) designed to provide assistance to other WIA-assisted youth programs, in order to catalyze the systems changes outlined in the SGA.

**IV. Statement of Work**

This SGA seeks proposals from organizations that will implement demonstration projects designed to develop their WIA-assisted youth program's capacity to increase its services to youth with disabilities including those with non-visible disabilities such as psychiatric disabilities, substance addiction, mental retardation, and learning disabilities. The ultimate goal is to allow these programs to become leaders in developing and further demonstrating strategies and techniques to increase both the participation of and results for youth with disabilities.

These grants are designed to enable WIA-assisted youth programs to support those needed efforts to achieve improved service to youth with disabilities in their existing programs. Grant funds may not be used to provide direct service payments for youth with disabilities; existing funding is to be used for this purpose. Rather, these funds are intended to be used in ways which create system change or overall program improvements to enable youth programs to more successfully serve youth with disabilities.

Under this grant, grantees must serve at least 40 youth with disabilities each year or, if the program has fewer than 200 participants, at least 20% of them must be participants with disabilities.

Proposals must demonstrate how the grantee would develop, implement, evaluate, and disseminate new or improved approaches to the youth programs that generate knowledge and promote best practices, to increase participation, and improve results in those programs for young people with disabilities. In addition, grantees must participate in technical assistance efforts designed to disseminate to other programs their successful strategies and techniques for serving greater numbers of youth with disabilities including those with non-visible disabilities.

All grantees must operate demonstration projects that integrate the four key themes and ten program elements of WIA-assisted youth programs, listed at WIA section 129(c)(2) (20 CFR 644.410) discussed above with one or more of the following best practice features:

1. Demonstrations focused on promoting effective structures, policies, and practices to improve results for youth with disabilities in WIA-assisted programs, including those with non-visible disabilities, in areas such as admission, enrollment, assessment, staff development, interagency coordination, etc.;

2. Demonstrations of effective service interventions and approaches that help young people with disabilities to overcome barriers to positive education and employment outcomes including such things as illicit drug use;

3. Demonstrations that focus on the link between academic and occupational skill standards; and on the integration of academic and applied learning in real work settings;

4. Demonstrations that focus on supporting and accommodating young people with disabilities in integrated, inclusive work, and work-preparation environments at all times, especially if their educational program has been delivered even partially in a segregated setting;

5. Demonstrations that focus on youth-centered planning and development (*e.g.*, assessment, choice, rights and responsibilities, life skills, drop out prevention strategies, paid and unpaid work experiences, leadership development, adult mentoring);

6. Demonstrations that focus on promoting physical and mental health, substance abuse prevention, and the link between health and positive educational and employment outcomes;

7. Demonstrations that focus on increasing the type of involvement by business, family, and community, that create effective connections to intermediaries with strong links to the job market and to local and regional employers;

8. Demonstrations which develop and leverage linkages with other state and local initiatives that provide services and supports for young people with significant disabilities. Such initiatives may include, but are not limited to, systems change efforts promoting enduring systems improvement and comprehensive coordination; health care; substance abuse prevention; housing; transportation; education; supported employment; small business development; technology related assistance; private foundations; faith-based initiatives; and

9. Demonstrations that research alternative methods of measuring WIA performance outcomes that consider the various characteristics of people with disabilities, including those with non-visible disabilities.

Some examples of resources for information about WIA-assisted youth program components and these best practice features can be located on the following Web sites:

1. Employment and Training Administration (ETA) Office of Youth Services Web site: *www.doleta.gov/youth—services*.

2. National Transition Alliance for Youth with Disabilities: *www.dssc.org/nta*.

3. The Department of Health and Human Services, Maternal and Child Health, ''Healthy and Ready to Work'' Web site: *www.mchbhrtw.org*.

4. National Youth Employment Coalition, Program and Effective Practices Network (PEPNET) Web site: *www.nyec.org*.

5. National Center on Secondary Education and Transition Web site: *www.ici.edu*.

6. The National Collaborative on Workforce and Disability Web site: *www.ncwd-youth.info/ig.html*.

In addition, a model demonstration project must:

1. Provide a detailed management plan for project goals, objectives, and activities;

2. Describe how they plan to comply with the employment nondiscrimination and equal opportunity requirements of the various laws listed in the assurances section, and how they plan to meet the needs of individuals with disabilities from diverse cultures and/or racial and ethnic groups;

3. Use rigorous quantitative or qualitative evaluation methods and data;

4. Evaluate the model by using multiple measures of results to determine the effectiveness of the model and its components or strategies for continuous program improvements;

5. Produce detailed procedures and materials that would enable others to replicate the model;

6. Communicate with appropriate audiences through means such as technical assistance providers and disseminators, publications, conference presentations, and/or a web site. (If the project maintains a web site, it must include relevant information and documents in an accessible form); and

7. Collaborate with appropriate Federal and state agencies and

programs, such as the Department of Health and Human Services Maternal and Child Health Bureau, Children with Special Health Care Needs Program, Health Care Financing Administration, Substance Abuse and Mental Health Services Administration, Administration on Developmental Disabilities, Social Security Administration, and the Department of Education Office of Special Education and Rehabilitation Services.

Grantees must support the travel cost associated with sending at least one representative to the annual ODEP Grantees' training conference, to be held in Washington, DC.

The Department will arrange for an independent evaluation of outcomes, impacts, and benefits of the demonstration projects. Grantees must make records available to evaluation personnel, as specified by the evaluator(s) under the direction of the Department.

**V. Funding Availability**

The period of performance will be 24 months from the date of execution by the Government. Up to five (5) competitive grants will be awarded in the range of $350,000 to $500,000. It is expected that the funds used for this SGA will support the costs associated with the development, implementation, and evaluation of a model demonstration project for a youth program to significantly increase the numbers of young people with disabilities participating and benefiting from program activities. Projects can use the available funds to conduct a variety of activities to support these models, such as outreach, recruitment, staff training, strategic planning, assessment, curriculum/materials development, career development, student-focused planning, program alignment, partnership building, reasonable accommodations, etc. Youth programs are required to use existing funding to provide direct services to young people with disabilities.

**VI. Eligible Applicants**

To be eligible, applicants must be WIA grant recipients for a local area, fiscal agents for such grant recipients, Local Boards, and/or competitively selected eligible youth service providers. Each grantee must involve members of two specific groups in strategic planning and implementation activities: youth with disabilities, and relevant experts in the field of young people with disabilities (such as disability organizations, researchers, policy makers, employers, family members and/or family organizations, independent living centers, or service providers.)

According to section 18 of the Lobbying Disclosure Act of 1995, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan. *See* 2 U.S.C. 1611; 26 U.S.C. 501(c)(4).

**VII. Application Contents**

General Requirements—Two copies and an original of the proposal must be submitted, one of which must contain an original signature. Proposals must be submitted by the applicant only. There are three required sections of the application. Requirements for each section are provided in this application package.

*Part I—Executive Summary*

The Executive Summary must be no more than 2 single-spaced pages in length giving a clear summary of the project narrative.

*Part II—Project Narrative—(Appendices: Letters of Commitment/Support, Resumes, etc.)*

Applicants must include a project narrative that addresses the Statement of Work in Part IV of this notice and the selection criteria that are used by reviewers in evaluating the application.

You must limit the project narrative to the equivalent of no more than fifty (50) pages using the following standard. This page limit does not apply to Part I, the Executive Summary; Part III, the Project Financial Plan (Budget); and, the Appendices (the assurances and certifications, resumes, a bibliography or references, and the letters of support). A page is 8.5″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides). All text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs must be double-spaced (no more than three lines per vertical inch); and, if using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch (if using a non-proportional font or a typewriter, do not use more than 12 characters per inch.)

Applicants must also include in Part II of the proposal a narrative that addresses all of the Evaluation Criteria (section VIII below) that will be used by reviewers in evaluating individual proposals.

Applicants shall collaborate with other research institutes, centers, and studies and evaluations that are supported by DOL and other relevant Federal agencies.

*Part III Project Financial Plan (Budget)*

Applications must include a detailed financial plan that identifies by line item the budget plan designed to achieve the goals of this grant. The Financial Plan must contain the SF–424, Application for Federal Assistance, (Appendix A) and a Budget Information Sheet SF–424A (Appendix B).

In addition, the budget must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF 424 on behalf of the applicant must represent and be able to legally bind the responsible financial and administrative entity for a grant should that application result in an award. The applicant must also include the Assurances and Certifications Signature Page (Appendix C).

**VIII. Evaluation Criteria/Selection**

*A. Evaluation Criteria*

The application must include appropriate information of the type described below.

1. Significance of the Proposed Project (20 Points)

In determining the significance of the proposed project, the Department considers the following factors:

a. The potential contribution of the proposed project to increase knowledge or understanding of problems, issues, or effective strategies for youth programs in serving young people with disabilities;

b. The extent to which the proposed project is likely to yield findings that may be used by other appropriate agencies and organizations;

c. The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies;

d. The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for the products' being used effectively in a variety of other settings;

e. The extent to which the promising practices of the proposed project are to be disseminated in ways that will enable others to use the information or strategies;

f. The potential replicability (national significance) of the proposed project or

strategies, including, as appropriate, the potential for implementation in a variety of settings; and,

g. The importance or magnitude of the results which are likely to be attained by the proposed project.

2. Quality of the Project Design (20 Points)

In evaluating the quality of the proposed project design, the Department considers the following factors:

a. The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

b. The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population and other identified needs;

c. The extent to which the design of the proposed project can measure methods for recruiting and serving youth with disabilities each year;

d. The extent to which the proposal demonstration incorporates the four key themes identified in Part IV, Statement of Work;

e. The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of this grant;

f. The extent to which the design of the proposed project reflects a review of disability related literature, up-to-date knowledge from research and effective practice of youth-centered planning and youth development principles and approaches, and the use of appropriate methodological tools to ensure successful achievement of project objectives;

g. The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, state, and Federal resources;

h. The extent to which the applicant encourages involvement of young people with disabilities, relevant experts, and organizations in project activities; and,

i. The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

3. Quality of Project Personnel (15 Points)

The Project Narrative must describe the proposed staffing of the project and must identify and summarize the qualifications of the personnel who will carry it out. The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities. In addition, the Department considers the qualifications, including relevant education, training and experience of key project personnel as well as the qualifications, including relevant training and experience of project consultants or subcontractors. Resumes must be included in the Appendices.

4. Adequacy of Resources (10 Points)

In evaluating the adequacy of resources for the proposed project, the Department considers the following factors:

a. The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization;

b. The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project;

c. The extent to which the budget is adequate to support the proposed project;

d. The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project; and

e. The extent to which the applicant proposes to leverage other resources and funds, or to use these funds to leverage other funds.

The applicant may include letters of commitment from proposed partners in the Appendix.

5. Quality of the Management Plan (20 points)

In evaluating the quality of the management plan for the proposed project, the Department considers the following factors:

a. The extent to which the management plan for project implementation achieves the objectives of the proposed project on time and within budget, including clearly defined staff responsibilities, and time allocated to project activities, time lines, milestones for accomplishing project tasks and project deliverables;

b. The adequacy of mechanisms for ensuring high-quality products and services from the proposed project; and,

c. The extent to which the time commitments of the project director and/or principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

6. Quality of the Project Evaluation (15 points)

In evaluating the quality of the project's evaluation design, the Department considers the following factors:

a. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, context, and outcomes of the proposed project;

b. The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

c. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data;

d. The extent to which the evaluation will provide information to other youth programs about effective strategies suitable for replication or testing in other settings; and,

e. The extent to which the methods of evaluation measure in both quantitative and qualitative terms, program results and satisfaction of youth with disabilities.

*B. Selection Criteria*

Acceptance of a proposal and an award of federal funds to sponsor any program(s) is not a waiver of any grant requirement and/or procedures. Grantees must comply with all applicable Federal statutes, regulations, administrative requirements and OMB Circulars. For example, the OMB circulars require, and an entity's procurement procedures must require, that all procurement transactions shall be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the award does not provide the justification or basis to sole-source the procurement, i.e., to avoid competition.

Applications will be reviewed by a panel using the criteria described in this SGA. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify applicants as potential grantees. Although the Government reserves the right to award on the basis of the initial proposal submissions, the Government may establish a competitive range, based upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The Government reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The Government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination considering factors such as:

1. Findings of the grant technical evaluation panel
2. Geographic distribution of the competitive applications;
3. Assuring a variety of program designs; and,
4. The availability of funds.

**IX. Reporting**

Grantees must submit financial and participation reports under this program as prescribed by OMB Circulars A–102 and A–110 as applicable. *See also* 29 CFR parts 95 & 97. It is estimated that the quarterly program report will take five (5) hours to complete. These include:

1. Financial Reports;
2. Quarterly and Final Program Results and Reports on the Satisfaction of Youth with Disabilities;
3. Other Reporting (to Technical Assistance Service Providers, etc.), as prescribed by DOL.

**X. Administrative Provisions**

*A. Administrative Standards and Provisions*

Grants awarded under this SGA are subject to the following:

- 29 CFR Part 95—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education.
- 29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts, and Agreements
- 29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

The grant awarded under this SGA shall be subject to the following:

*B. Allowable Costs*

Determinations of allowable costs are made in accordance with the following applicable Federal cost principles:

- State and Local Government—OMB Circular A–87
- Nonprofit Organizations—OMB Circular A–122
- Profit-making Commercial Firms—48 CFR Part 31

Profit will *not* be considered an allowable cost in any case.

*C. Grant Non-Discrimination Assurances*

Each applicant must include an assurance that, as a condition of the award, the applicant will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

- 29 CFR part 31—Nondiscrimination in Federally-assisted programs of the Department of Labor, effectuation of Title VI of the Civil Rights Act of 1964. (Title VI of the Civil Rights Act of 1964)
- 29 CFR part 32—Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Assistance. (Section 504 of the Rehabilitation Act)
- 29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. (Title IX of the Education Amendments of 1972)
- 29 CFR part 37 Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA)

The applicant must include the attached assurances and certifications.

*D. Limitation on Administrative and Indirect Costs*

1. Direct Costs for administration, plus any indirect charges claimed.
2. Indirect costs claimed by the applicant must be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application.
3. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.
4. Rates traceable and trackable through the State Workforce Agency's Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in grants to State Workforce Agencies.

Signed at Washington, DC, this 18th day of June, 2002.

**Lawrence J. Kuss,**

*Grant Officer.*

APPENDIX A. Application for Federal Assistance, Form SF 424
APPENDIX B. Budget Information Sheet, Form SF 424A
APPENDIX C. Assurances and Certifications Signature Page

**BILLING CODE 4510–CX–P**

## APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

| 2. DATE SUBMITTED | Applicant Identifier |
|---|---|
| 3. DATE RECEIVED BY STATE | State Application Identifier |
| 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

**1. TYPE OF SUBMISSION:**

| Application | Preapplication |
|---|---|
| ☐ Construction | ☐ Construction |
| ☐ Non-Construction | ☐ Non-Construction |

**5. APPLICANT INFORMATION**

| Legal Name: | Organizational Unit: |
|---|---|
| Address *(give city, county, State, and zip code):* | Name and telephone number of person to be contacted on matters involving this application *(give area code)* |

**6. EMPLOYER IDENTIFICATION NUMBER** *(EIN):*

☐☐ – ☐☐☐☐☐☐☐☐☐

**7. TYPE OF APPLICANT:** *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

**8. TYPE OF APPLICATION:**

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify):*

_____

**9. NAME OF FEDERAL AGENCY:**

**10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:**

☐☐ – ☐☐☐

TITLE:

**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**

**12. AREAS AFFECTED BY PROJECT** *(Cities, Counties, States, etc.):*

| 13. PROPOSED PROJECT | | 14. CONGRESSIONAL DISTRICTS OF: | |
|---|---|---|---|
| Start Date | Ending Date | a. Applicant | b. Project |

**15. ESTIMATED FUNDING:**

| | |
|---|---|
| a. Federal | $ .00 |
| b. Applicant | $ .00 |
| c. State | $ .00 |
| d. Local | $ .00 |
| e. Other | $ .00 |
| f. Program Income | $ .00 |
| g. TOTAL | $ .00 |

**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**

☐ Yes If "Yes," attach an explanation. ☐ No

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.**

| a. Type Name of Authorized Representative | b. Title | c. Telephone Number |
|---|---|---|
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

## INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

| Item: | Entry: |
|---|---|
| 1. | Self-explanatory. |
| 2. | Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable). |
| 3. | State use only (if applicable). |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. |
| 7. | Enter the appropriate letter in the space provided. |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>-- "New" means a new assistance award.<br>-- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>-- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |
| 9. | Name of Federal agency from which assistance is being requested with this application. |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. |
| 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 13. | Self-explanatory. |
| 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |

SF-424 (Rev. 7-97) Back

## BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

**SECTION A - BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. Totals | | $ | $ | $ | $ | $ |

**SECTION B - BUDGET CATEGORIES**

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | (5) |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges *(sum of 6a-6h)* | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS *(sum of 6i and 6j)* | $ | $ | $ | $ | $ |
| | | | | | |
| 7. Program Income | $ | $ | $ | $ | $ |

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

**Previous Edition Usable**

| SECTION C - NON-FEDERAL RESOURCES | | | | |
|---|---|---|---|---|
| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTAL *(sum of lines 8-11)* | $ | $ | $ | $ |

| SECTION D - FORECASTED CASH NEEDS | | | | | |
|---|---|---|---|---|---|
| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
| 13. Federal | $ | $ | $ | $ | $ |
| 14. Non-Federal | | | | | |
| 15. TOTAL *(sum of lines 13 and 14)* | $ | $ | $ | $ | $ |

| SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT | | | | |
|---|---|---|---|---|
| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTAL *(sum of lines 16-19)* | $ | $ | $ | $ |

| SECTION F - OTHER BUDGET INFORMATION | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |
| 23. Remarks: | |

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## INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary Lines 1-4 Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g)**

*For new applications*, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

*For continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** - Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Line 6a-i** - Show the totals of Lines 6a to 6h in each column.

**Line 6j** - Show the amount of indirect cost.

**Line 6k** - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

**INSTRUCTIONS FOR THE SF-424A** (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal Resources**

**Lines 8-11** Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** - Enter the contribution to be made by the applicant.

**Column (c)** - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** - Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** - Enter totals of Columns (b), (c), and (d).

**Line 12** - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** - Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** - Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** - Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16-19** - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** - Provide any other explanations or comments deemed necessary.

## ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

D. Applicant is not a 501 (c) (4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

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SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

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APPLICANT ORGANIZATION DATE SUBMITTED

**Please Note: This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

[FR Doc. 02–16099 Filed 6–25–02; 8:45 am]
**BILLING CODE 4510–CX–C**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (02–077)]**

### NASA Advisory Council, Biological and Physical Research Advisory Committee, Space Station Utilization Advisory Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee, Space Station Utilization Advisory Subcommittee (SSUAS).

**DATES:** Tuesday, July 9, 2002, 8 a.m. to 5 p.m., and Wednesday, July 10, 2002, 8 a.m. to 5 p.m., and Friday, July 12, 2002, 8 a.m. to 5 p.m.

**ADDRESSES:** Center for Advanced Space Studies, 3600 Bay Area Boulevard, Houston, Texas.

**FOR FURTHER INFORMATION CONTACT:** Dr. Neal Pellis, Code UM, National Aeronautics and Space Administration, Houston, TX 77058, (202) 358–2022.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. Advance notice of attendance to the Executive Secretary is requested. The agenda for the meeting will include the following topics:

—Research Operations
—Writing Assignments
—Response to Prior Recommendations
—Operations and Integration Improvements
—Special Topics
—Recommendations

The following items are not part of the SSUAS Summer Workshop, but are scheduled consecutively with it.

—International Forum on the Scientific Uses of Space Station Meeting on Friday, July 12, 2002, afternoon
—Meeting on the International Space Station Utilization Management Concept Development on Thursday, July 11, 2002, all day

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 20, 2002.

**Sylvia K. Kraemer,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 02–16048 Filed 6–25–02; 8:45 am]
**BILLING CODE 7510–1–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46091; File No. 4–208]**

### Intermarket Trading System; Notice of Filing of the Nineteenth Amendment to the ITS Plan Relating to the Philadelphia Stock Exchange, Inc.'s Implementation of a Remote Specialist Program

June 19, 2002.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 11A3a3–2 thereunder,[2] notice is hereby given that on May 3, 2002, the Intermarket Trading System Operating Committee (''ITSOC'') submitted to the Securities and Exchange Commission (''Commission'') a proposed amendment (''Nineteenth Amendment'') to the restated ITS Plan.[3] The purpose of the proposed plan amendment is to recognize the Phlx's implementation of a remote specialist program. The Commission is publishing this notice to solicit comment on the proposed amendment from interested persons.

#### I. Description of the Amendment

The ITSOC proposes to amend the ITS Plan to recognize the Phlx's implementation of its remote specialist program.[4] Specifically, the ITSOC proposes to amend Sections 1 (''Definitions''), 6(a)(i)(A) (''Receipt of Quotations''), 6(a)(ii) (''Description of ITS Transactions''), and 8(a) (''System Access'') of the ITS Plan to include references regarding the premises of Phlx Remote Specialists on which ITS stations are located, and define the terms ''Phlx Remote Specialist,''[5] ''Phlx Registered Specialist,''[6] and ''Phlx Designated Specialist.''[7]

#### II. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed Plan amendment that are filed with the Commission, and all written communications relating to the proposed Plan amendment 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 proposed Plan Amendment will also be available for inspection and copying at the principal office of the ITS. All submissions should refer to File No. 4–208 and should be submitted by July 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–16065 Filed 6–25–02; 8:45 am]
**BILLING CODE 8010–01–P**

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] The ITS is a National Market System (''NMS'') plan, which was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

The ITS Participants include the American Stock Exchange LLC (Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Inc. (''CBOE''), the Chicago Stock Exchange, Inc. (''CHX''), the Cincinnati Stock Exchange, Inc. (''CSE''), the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange, Inc. (''NYSE''), the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') (''Participants'').

[4] *See* Securities Exchange Act Release No. 45184 (December 21, 2001), 67 FR 622 (January 4, 2002) (order approving SR–Phlx–2001–98).

[5] The term ''Phlx Remote Specialist'' is defined in the proposed amendment as a Phlx Registered Specialist who is authorized by Phlx Rule 461 to conduct his/her regular specialist trading activities at remote locations off the floor of the Phlx.

[6] The term ''Phlx Registered Specialist'' is defined in the proposed amendment as a Phlx member who has been appointed and registered pursuant to Phlx Rule 202 to act as a market maker in one or more System securities.

[7] The term ''Phlx Designated Specialist'' is defined in the proposed amendment as a Phlx Registered Specialist appointed by the Phlx to coordinate the handling of commitments to trade received by the Phlx.

[8] 17 CFR 200.30–3(a)(29).

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 25619; 812–12580]**

## AXP Market Advantage Series, Inc., et al.; Notice of Application

June 19, 2002.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the ''Act'') from section 15(a) of the Act and rule 18f–2 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

**APPLICANTS:** AXP Market Advantage Series, Inc.; AXP Partners Series, Inc.; AXP Partners International Series, Inc.; AXP Strategy Series, Inc. (collectively, the ''AXP Funds,'' and the series of the AXP Funds, the ''AXP Portfolios''); AXP Variable Portfolio—Partners Series, Inc. (the ''Life Fund,'' and the series of the Life Fund, the ''Life Portfolio'') (the AXP Funds and the Life Fund, the ''Funds'') (the AXP Portfolios and the Life Portfolio, the ''Portfolios''); American Express Financial Corporation (''AEFC''); and IDS Life Insurance Company (''IDS Life'').

**FILING DATES:** The application was filed on July 20, 2001 and amended on June 19, 2002.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 16, 2002, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Funds, 901 Marquette Avenue South, Suite 2810, Minneapolis, MN 55402–3268. AEFC and IDS Life, 200 AXP Financial Center, Minneapolis, MN 55474.

**FOR FURTHER INFORMATION CONTACT:** John L. Sullivan, Senior Counsel, at (202) 942–0681, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

### Applicants' Representations

1. Each of the Funds is registered under the Act as an open-end management investment company and is organized as a Minnesota corporation. Each Fund is currently, or may be, composed of separate Portfolios, each with its own investment objectives and policies.[1] AEFC, a Delaware corporation, and IDS Life, a stock life insurance company organized under the laws of Minnesota, are each registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). IDS Life is a wholly owned subsidiary of AEFC. Shares of the Life Portfolio are sold to IDS Life and its subsidiaries as funding options for variable annuity contracts and variable life insurance policies offered through separate accounts of IDS Life and its subsidiaries.

2. Each AXP Portfolio has entered into an investment advisory agreement with AEFC pursuant to which AEFC provides investment advice and management services to the AXP Portfolio (each, an ''AXP Advisory Agreement''). IDS Life is the investment manager for the Life Portfolio, pursuant to an investment management agreement (the ''Life Management Agreement''). IDS Life has entered, with respect to the Life Portfolio, into an advisory agreement with AEFC, pursuant to which AEFC furnishes investment advice to the Life Portfolio (the ''Life Advisory Agreement,'' and together with the AXP Advisory Agreements and the Life Management Agreement, the ''Advisory Agreements''). The term ''Adviser'' is used to mean AEFC, with respect to the AXP Funds, and IDS Life and AEFC jointly, with respect to the Life Fund. Each Advisory Agreement has been approved by either the initial shareholder or the public shareholders of the relevant Portfolio [2] and by a majority of the relevant Fund's board of directors (''Board''), including a majority of the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Board Members'').

3. The Adviser seeks to achieve each Portfolio's objective by selecting one or more subadvisers (''Subadvisers'') who have demonstrated skill and experience in a particular area to manage part or all of a Portfolio's assets (''Adviser/Subadviser Structure''). The Adviser enters into investment subadvisory agreements (''Subadvisory Agreements'') with Subadvisers, under which each Subadviser, subject to the general supervision by the Adviser and the Board, is responsible for the purchase, retention and sale of securities for the applicable Portfolio. Each Subadviser will be registered or exempt from registration under the Advisers Act. For services under the Subadvisory Agreement, a Subadviser receives a fee from AEFC at an annual rate based on a percentage of the Portfolio's average daily net assets. The amount paid to the Subadviser originates from the fees paid to AEFC by the Portfolios (in the case of the Life Portfolio, from the fees paid to AEFC by IDS Life).

4. Applicants request relief to permit the Adviser, subject to the approval of the Board, to enter into and materially amend a Subadvisory Agreement with a Subadviser that is not an affiliated person of the Adviser or of the Portfolio within the meaning of Section 2(a)(3) of the Act, except by virtue of serving as a Subadviser to the Portfolio (a ''Non-Affiliated Subadviser''), without such Subadvisory Agreement being approved by the shareholders of the applicable Portfolio.

### Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the

[1] Applicants request that the exemptive relief sought apply to any existing or future series of the Funds and any other registered open-end management investment companies or series thereof that: (a) Are advised by AEFC or any entity controlling, controlled by, or under common control with AEFC; (b) use the adviser/subadviser structure described in the application, and (c) comply with the terms and conditions in the application (included in the term ''Portfolios''). Applicants state that all registered management investment companies that currently intend to rely on the requested order are named as applicants. The name of any Portfolio will not contain the name of any Subadviser, as defined below, or, if the name of a Portfolio contains the name of a Subadviser, it will be preceded by AXP. AXP is the ticker symbol for American Express Company, which is the Adviser's parent company.

[2] The term ''shareholder'' includes variable life insurance policy and variable annuity contract owners that are unitholders of any separate account for which the Life Portfolio serves as a funding medium.

vote of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by policy and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the shareholders are relying on the Adviser's experience to select one or more Subadvisers best suited to achieve a Portfolio's investment objective. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by traditional investment advisory firms. Applicants contend that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Portfolios, and may preclude the Adviser from acting promptly and efficiently according to the judgment of the Board and the Adviser. Applicants also note that each Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f-2 under the Act, including the requirements of shareholder approval.

**Applicants' Conditions**

1. Before a Portfolio may rely on the order requested in the application, the operation of the Portfolio in the manner described in the application will be approved by a majority of the Portfolio's outstanding voting securities (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account), as defined in the Act, or, in the case of a Portfolio whose public shareholders (or variable contract owners through a separate account) will purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by its initial shareholder before shares of the Portfolio are offered to the public (or the variable contract owners through a separate account).

2. The prospectus of each Portfolio relying on the requested relief will disclose the existence, substance and effect of any order granted pursuant to the application. In addition, each Portfolio will hold itself out to the public as employing the Adviser/Subadviser Structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. The Adviser will provide general management and administrative services to each of the Portfolios, including overall supervisory responsibility for the general management and investment of each Portfolio, and, subject to the review and approval by the Board will (i) set each Portfolio's overall investment strategies; (ii) evaluate, select and recommend Subadvisers to manage all or part of a Portfolio's assets; (iii) when appropriate, allocate and reallocate a Portfolio's assets among multiple Subadvisers; (iv) monitor and evaluate the investment performance of Subadvisers; and (v) implement procedures reasonably designed to ensure that the Subadvisers comply with the relevant Portfolio's investment objectives, policies, and restrictions.

4. At all times, a majority of the Board will be Independent Board Members, and the nomination of new or additional Independent Board Members will be placed within the discretion of the then-existing Independent Board Members.

5. The Adviser will not enter into a subadvisory agreement with any Subadviser that is an affiliated person of the Adviser or of the Portfolio within the meaning of section 2(a)(3) of the Act, other than by virtue of serving as a Subadviser to the Portfolio (''Affiliated Subadviser''), without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account).

6. When a Subadviser change is proposed for a Portfolio with an Affiliated Subadviser, the Board, including a majority of the Independent Board Members, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the applicable Portfolio and its shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Portfolio and the unitholders of any sub-account) and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. No Board member or officer of the Fund or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by the Board member, director or officer) any interest in a Subadviser, except for (i) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

8. Within ninety days of the hiring of a new Subadviser, the Adviser will furnish the shareholders of the applicable Portfolio (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, the Adviser will furnish the unitholders of the sub-account) all the information about the new Subadviser that would be included in a proxy statement, including any change in such disclosure caused by the addition of a new Subadviser. To meet this obligation, the Adviser will provide shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, then by providing unitholders of the sub-account) within ninety days of the hiring of a Subadviser with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland**

*Deputy Secretary.*

[FR Doc. 02–16060 Filed 6–25–02; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–25617; File No. 812–12614]**

## The Travelers Insurance Company, et al.

June 19, 2002.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of application for an order pursuant to section 26(c) of the Investment Company Act of 1940 (the ''Act'') approving certain substitutions of securities and for an order of

exemption pursuant to section 17(b) of the Act.

**APPLICANTS:** The Travelers Insurance Company (''Travelers Insurance''), The Travelers Life and Annuity Company (''Travelers L & A''), The Travelers Fund U for Variable Annuities (''Fund U''), The Travelers Separate Account TM for Variable Annuities (''Account TM''), The Travelers Separate Account TM II for Variable Annuities (''Account TM II''), Travelers Separate Account QP for Variable Annuities (''Account QP''), The Travelers Separate Account Five for Variable Annuities (''Account Five''), The Travelers Separate Account Six for Variable Annuities (''Account Six''), and The Travelers Fund UL III for Variable Life Insurance (''Fund UL III'').

**FILING DATE:** The application was filed on August 31, 2001 and amended and restated on June 19, 2002.

**SUMMARY OF APPLICATION:** Applicants request an order to permit the substitutions by Travelers Insurance and Travelers L & A of shares of securities of various portfolios (each a ''Fund'' or ''Portfolio'') issued by certain management investment companies (each a ''Management Company'') and held by one or more of Fund U, Account TM, Account TM II, Account QP, Account Five, Account Six, and Fund UL III, (the ''Accounts'') to support variable annuity or variable life insurance contracts issued by Travelers or Travelers L & A (collectively, ''Contracts''), as follows: (1) Shares of AIM Capital Appreciation Portfolio for shares of OCC Equity, (2) shares of AIM Capital Appreciation Portfolio for shares of Montgomery Growth Fund, (3) shares of TST U.S. Government Securities Portfolio for shares of Templeton Global Income Securities Fund Class I, (4) shares of TST Quality Bond Portfolio for shares of CitiStreet Diversified Bond Fund, (5) shares of Dreyfus Small Cap Portfolio for shares of Delaware Small Cap Value Series, (6) shares of TST U.S. Government Securities Portfolio for shares of Putnam Diversified Income Portfolio, and (6) shares of TST U.S. Government Securities Portfolio for shares of Smith Barney High Income Portfolio. Applicants also request an order exempting them from the provisions of section 17(a) of the Act to the extent necessary to permit Travelers Insurance and Travelers L & A to carry out certain of the substitutions by redeeming shares of: (1) CitiStreet Diversified Bond Fund in kind and using the redemption proceeds to purchase shares of TST Quality Bond Portfolio; (2) Montgomery Growth Fund and OCC Equity in kind and using the redemption proceeds to purchase shares of AIM Capital Appreciation Portfolio; and (3) Templeton Global Income Securities Fund Class I, Putnam Diversified Income Portfolio, and Smith Barney High Income Portfolio in kind and using the redemption proceeds to purchase shares of TST U.S. Government Securities Portfolio.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the amended and restated application will be issued unless the Commission orders a hearing. Interested person may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 11, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506. Applicants, c/o Kathleen A. McGah, *Esq.,* Deputy General Counsel, The Travelers Life and Annuity Company, One Tower Square, Hartford, CT 06183. Copy to David S. Goldstein, *Esq.,* Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW, Washington, DC 20004–2415.

**FOR FURTHER INFORMATION CONTACT:** Harry Eisenstein, Senior Counsel, at (202) 942–0670, or Zandra Bailes, Branch Chief, at (202) 942–0677, Office of Insurance Products, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW, Washington, DC 20549 (tel. (202) 942–8090).

### Applicants' Representations

1. Travelers Insurance is a stock insurance company chartered in 1864 in Connecticut and continuously engaged in the insurance business since that time. It is licensed to conduct life insurance business in all fifty states, the District of Columbia, Puerto Rico, Guam, the U.S. and British Virgin Islands, and the Bahamas. Travelers Insurance is an indirect wholly-owned subsidiary of Citigroup, Inc. As of December 31, 2001, Travelers Insurance had consolidated assets of approximately $77 billion. For purposes of the Act, Travelers Insurance is the depositor and sponsor of the following variable annuity and variable life insurance separate accounts: Account TM, Fund U, Account QP, Account Five, and Fund UL III.

2. Travelers L & A is a stock life insurance company chartered in 1973 in Connecticut and continuously engaged in the insurance business since that time. It is licensed to conduct life insurance business in a majority of the states of the United States, the District of Columbia, and Puerto Rico. Travelers L & A is an indirect wholly-owned subsidiary of Citigroup, Inc. As of December 31, 2001, Travelers L & A had assets of approximately $12 billion. For purposes of the Act, Travelers L & A is the depositor and sponsor of the following variable annuity separate accounts: Account TM II and Account Six.

3. Under Connecticut law, the assets of each respective Account attributable to the Contracts are owned either by Travelers Insurance or Travelers L & A, but are held separately from the other assets of Travelers Insurance or Travelers L & A for the benefit of the owners of, and the persons entitled to payment under, those Contracts. To the extent so provided under the applicable Contracts, that portion of the assets of any such Account equal to the reserves and other contract liabilities with respect to that Account are not chargeable with liabilities arising out of any other business Travelers Insurance or Travelers L & A may conduct. Income, gains and losses, realized or unrealized, from the assets of each Account are credited to or charged against that Account without regard to the other income, gains, or losses of Travelers Insurance or Travelers L & A. Each Account is a ''separate account'' as defined by Rule 0–1(e) under the Act and is registered with the Commission as a unit investment trust. Each Account is comprised of a number of subaccounts, and each subaccount invests exclusively in a Portfolio or Fund.

4. The Contracts are flexible premium variable annuity and variable life insurance contracts. The variable annuity Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a variable or fixed basis. The variable life insurance Contracts provide for the accumulation of values on a variable basis, fixed basis, or both throughout the

insured's life and for a death benefit, upon the death of the insured. Under each of the Contracts, other than the Travelers Universal Annuity (Fund U), Travelers Insurance and Travelers L & A reserve the right to substitute shares of one Fund or Portfolio for shares of another, including a Fund or Portfolio of a different Management Company.

5. A Contract owner may transfer all or any part of the Contract value from one subaccount to any other subaccount or a fixed account as long as the Contract remains in effect for variable life insurance contracts, and at any time up to 30 days before the due date of the first annuity payment for variable annuity contracts. For many of the variable annuity contracts, Travelers Insurance and Travelers L & A reserve the right to limit the number of transfers to one per six-month period.

6. Currently, there is no charge for transfers. However, Travelers Insurance and Travelers L & A both reserve the right under certain of their respective Contracts to assess a transfer charge of up to $10.00 on transfers in excess of twelve per year for variable annuity contracts and six per year for variable life insurance contracts.

7. Travelers Insurance and Travelers L & A, on behalf of themselves and their Accounts propose a series of substitutions of shares held in those Accounts. The table below summarizes the proposed substitutions.

| Contract(s) | Replaced fund(s) | Replacing fund(s) |
|---|---|---|
| Fund U: | | |
| Travelers Universal Annuity (''UA'') | Putnam Diversified Income Portfolio | TST U.S. Government Securities Portfolio. |
| | Templeton Global Income Securities Portfolio | |
| | Smith Barney High Income Portfolio | |
| Fund UL III: | | |
| Corporate Owned Life Insurance (''COLI'') | CitiStreet Diversified Bond Fund | TST Quality Bond Portfolio. |
| | Delaware Small Cap Value Series | Dreyfus Small Cap Portfolio. |
| | Putnam Diversified Income Portfolio | TST U.S. Government Securities Portfolio. |
| Corporate Owned Life Insurance 2000 (''COLI 2000''). | CitiStreet Diversified Bond Fund | TST Quality Bond Portfolio. |
| | Delaware Small Cap Value Series | Dreyfus Small Cap Portfolio. |
| Accounts TM and TM II: | | |
| Travelers Marquis Portfolios (''Marquis'') | OCC Equity Portfolio | AIM Capital Appreciation Portfolio. |
| | Montgomery Growth Fund | |
| Account QP: | | |
| Gold Track | Templeton Global Income Securities Portfolio | TST U.S. Government Securities Portfolio. |
| Gold Track Select | OCC Equity Portfolio | AIM Capital Appreciation Portfolio. |
| | Montgomery Growth Fund | |
| | Templeton Global Income Securities Portfolio | TST U.S. Government Securities Portfolio. |
| Accounts Five and Six: | | |
| Travelers Retirement Annuity (''TRA'') | OCC Equity Portfolio | AIM Capital Appreciation Portfolio. |
| | Montgomery Growth Fund | |

8. Applicants believe that for each proposed substitution, the investment objectives and policies of the replacing Fund(s) or Portfolio(s) are sufficiently similar to those of the replaced Fund(s) or Portfolio(s) that Contract owners will have reasonable continuity in investment expectations. Applicants also believe that the proposed substitutions will better serve the interests of Contract owners because, in each case, the replacing Fund or Portfolio has lower fees or expenses, superior or comparable performance, and either a larger asset base than the replaced Fund or Portfolio or one that is growing rather than shrinking.

9. Each Management Company is registered as an open-end management investment company under the Act. Further, each is a series investment company as defined by Rule 18f–2 under the Act and issues separate series of shares of stock (for corporations) or of beneficial interest (for business trusts) in connection with each Fund or Portfolio. The shares of each Fund or Portfolio are registered under the 1933 Act on Form N–1A. The table below lists each Management Company, its type of business entity and the date established, 1940 Act file number, total number of Funds or Portfolios comprising the management company, the specific Funds or Portfolios involved in the proposed substitutions, and their 1933 Act file numbers.

| Trust or corporation | Entity (date) | 1940 Act file No. | Total of number fund(s) | Involved funds or portfolios | 1933 Act file No. |
|---|---|---|---|---|---|
| Travelers Series Fund (''TSF'') | MD Corp. (2/22/94) | 811–08372 | 15 | Putnam Diversified Income Portfolio; AIM Capital Appreciation Portfolio; Smith Barney High Income Portfolio. | 33–756444 |
| Travelers Series Trust (''TST'') | MA business trust (10/11/91) | 811–6465 | 19 | U.S. Government Securities Portfolio; Quality Bond Portfolio. | 33–43618 |
| The Montgomery Funds III (''Montgomery''). | DE business trust (8/24/94) | 811–08782 | 9 | Growth Fund | 33–84450 |
| Dreyfus Variable Investment Fund (''Dreyfus''). | MA business trust (8/31/90) | 811–5125 | 13 | Small Cap Portfolio | 33–13690 |
| Franklin Templeton Variable Insurance Products Trust (''Templeton''). | MA business trust (4/26/88) | 811–05583 | 27 | Templeton Global Income Securities Fund. | 33–23493 |

| Trust or corporation | Entity (date) | 1940 Act file No. | Total of number fund(s) | Involved funds or portfolios | 1933 Act file No. |
|---|---|---|---|---|---|
| OCC Accumulation Trust (''OCC''). | MA business trust (5/12/94) ..... | 811–08512 | 12 | Equity Portfolio ..... | 33–78944 |
| Delaware Group Premium Fund (''Delaware''). | DE business trust (12/15/99) .... | 811–5162 | 19 | Small Cap Value Series ..... | 33–14363 |
| CitiStreet Funds, Inc. (''CitiStreet''). | MD Corp. (12/92) ..... | 811–7450 | 4 | Diversified Bond Fund ..... | 33–57536 |

10. The investment objective, investment strategy or key investments, investment advisers, and management fees for each Portfolio or Fund are described below. The Funds and Portfolios are grouped together by the proposed replacing Fund or Portfolio.

11. In each group, the first set of accompanying charts shows the approximate year-end size (in net assets), expense ratio (ratio of operating expenses as a percentage of average net assets), and annual total returns for each of the past three years for each of the Funds and Portfolios involved in the proposed substitutions. Funds and Portfolios marked with an asterisk in these charts have fiscal years ending on October 31st.

12. In each group, the second set of charts shows the approximate annual management fees, other expenses, and total expenses of each of the Funds or Portfolios involved in the proposed substitutions both before and after any expense reimbursement or fee waivers. The management fees and expenses shown are those for the 2001 fiscal year. Funds and Portfolios marked with an asterisk in these charts have fiscal years ending on October 31st.

*Group 1 Replacing Fund*

13. The investment objective of the AIM Capital Appreciation Portfolio is capital appreciation. The Portfolio invests primarily in common stocks of companies the subadviser believes are likely to benefit from new or innovative products, services, or processes, as well as those that have experienced above-average, long-term growth in earnings and have excellent prospects for future growth. Travelers Investment Adviser, Inc. (''TIA'') serves as investment adviser to the Portfolio and AIM Capital Management serves as subadviser. AIM Capital Appreciation Portfolio pays a monthly investment management fee based on an annual rate of 0.80% of the average daily net assets of the Portfolio. Applicants propose to substitute shares of AIM Capital Appreciation Portfolio for shares of OCC Equity Portfolio and Montgomery Growth Portfolio.

*Group 1 Replaced Funds*

14. The investment objective of the OCC Equity Portfolio is long-term capital appreciation. The Portfolio invests primarily in equity securities that the investment adviser believes are undervalued in the marketplace. OpCap Advisors serves as the investment adviser to the Portfolio and PIMCO serves as the Portfolio's subadviser. Equity Portfolio pays an investment management fee at the annual rate of 0.80% of the first $400 million of average daily net assets, 0.75% on the next $400 million of average daily net assets and 0.70% of assets in excess of $800 million of average daily net assets.

15. The investment objective of Montgomery Growth is long-term capital appreciation by investing in growth-oriented U.S. companies. The Fund may invest in U.S. companies of any size, but invests at least 65% of its total assets in those companies whose shares have a total stock market value of at least $1 billion. Montgomery Asset Management, LLC serves as investment adviser to the Fund. The Growth Fund pays a monthly investment management fee based on an annual rate of 1.00% of the average daily net assets of the Fund.

| | Net assets at year-end (in millions) | Expense ratio (in percent) | Total return |
|---|---|---|---|
| AIM Capital Appreciation Portfolio:* | | | |
| 1999 | $300 | 0.84 | 32.41 |
| 2000 | 435 | 0.83 | 36.53 |
| 2001 | 224 | 0.83 | −43.46 |
| OCC Equity Portfolio: | | | |
| 1999 | 70.51 | 0.91 | 2.5 |
| 2000 | 88.61 | 0.95 | 9.9 |
| 2001 | 78.78 | 0.93 | −7.0 |
| Montgomery Growth Fund: | | | |
| 1999 | 19.65 | 1.25 | 20.79 |
| 2000 | 21.07 | 1.25 | −9.06 |
| 2001 | 14.39 | 1.25 | −20.75 |

[Amounts in percent]

| Fund | Before reimbursement or fee waiver | After reimbursement or fee waiver |
|---|---|---|
| AIM Capital Appreciation Portfolio* | 0.80 | 0.80 |
| | 0.03 | 0.03 |
| | 0.83 | 0.83 |
| OCC Trust Equity Portfolio | 0.80 | 0.80 |

[Amounts in percent]

| Fund | Before reimbursement or fee waiver | After reimbursement or fee waiver |
|---|---|---|
| | 0.13 | 0.13 |
| | 0.93 | 0.93 |
| Montgomery Growth Fund | 1.00 | 1.00 |
| | 2.23 | 0.25 |
| | 3.23 | 1.25 |

*Group 2 Replacing Funds*

16. The investment objective of the TST U.S. Government Securities Portfolio is current income and total return by investing in debt securities of the highest quality. The Portfolio invests in U.S. Treasury notes and bonds and obligations of U.S. government instrumentalities and federal agencies. Travelers Asset Management Company LLC serves as investment adviser to the Portfolio. U.S. Government Securities Portfolio pays a monthly investment management fee based on an annual rate of 0.32% of the average daily net assets of the Portfolio. Applicants propose to substitute shares of TST U.S. Government Securities Portfolio for shares of the Templeton Global Income Securities Fund, shares of the Smith Barney High Income Portfolio, and those shares of Putnam Diversified Income Portfolio that fund contracts issued through the Fund U Account.

*Group 2 Replaced Funds*

17. The investment objective of the Putnam Diversified Income Portfolio is high current income consistent with preservation of capital. The Portfolio invests primarily in debt securities of U.S. and foreign governments and corporations. The Portfolio may invest in securities with a wide range of credit qualities. The Portfolio's duration will generally vary from 3 to 7 years depending on market conditions and the subadviser's outlook for interest rates. Individual securities may be of any duration. TIA serves as investment adviser to the Portfolio, and Putnam Investment Management, Inc. serves as subadviser. Putnam Diversified Income Portfolio pays a monthly investment management fee based on an annual rate of 0.75% of the average daily net assets of the Portfolio.

18. The investment objective of the Templeton Global Income Securities Fund is high current income, consistent with preservation of capital with a secondary objective of capital appreciation. Under normal circumstances, the Fund invests at least 65% of its total assets in the debt securities of governments and their political subdivisions and agencies, supranational organizations, and companies located anywhere in the world, including emerging markets. This Fund may invest up to 35% of net assets in below investment grade debt (not rated lower than B). Average weighted maturity is generally 5 to 15 years. Franklin Advisers, Inc. serves as the investment adviser to the Fund and Templeton Investment Counsel, LLC serves as subadviser. Templeton Global Income Securities Fund pays a monthly investment management fee based on an annual rate of 0.60% of the average daily net assets of the Fund.

19. The investment objective of the Smith Barney High Income Portfolio is high current income and secondarily, capital appreciation. The Portfolio invests primarily in high-yielding, corporate debt obligations, and preferred stock of U.S. and foreign issuers. The Portfolio invests primarily in below investment grade securities, but may not invest more than 10% of its assets in securities rated lower than B, or in unrated securities of comparable quality. Although the Portfolio may invest in securities of any maturity, under current market conditions, it has an average remaining maturity of between 5 and 10 years. Smith Barney Fund Management LLC serves as investment adviser to the Portfolio. Smith Barney High Income Portfolio pays a monthly investment management fee based on an annual rate of 0.60% of the average daily net assets of the Portfolio.

| | Net assets at year-end (in millions) | Expense ratio (in percent) | Total return (in percent) |
|---|---|---|---|
| TST U.S. Government Securities Portfolio: | | | |
| 1999 | $61.62 | 0.48 | −4.23 |
| 2000 | 90.97 | 0.48 | 14.53 |
| 2001 | 126.49 | 0.45 | 5.82 |
| Putnam Diversified Income Portfolio*: | | | |
| 1999 | 156 | 0.83 | 1.80 |
| 2000 | 141 | 0.87 | 0.21 |
| 2001 | 128 | 0.90 | 4.60 |
| Templeton Global Income Securities Fund: | | | |
| 1999 | 90.54 | 0.65 | −5.79 |
| 2000 | 81.17 | 0.72 | 4.32 |
| 2001 | 63.78 | 0.71 | 2.55 |
| Smith Barney High Income Portfolio*: | | | |
| 1999 | 199 | 0.66 | 5.28 |
| 2000 | 191 | 0.66 | −3.54 |
| 2001 | 176 | 0.67 | −8.08 |

[Amounts in percent]

| Fund | Before reimbursement or fee waiver | After reimbursement or fee waiver |
|---|---|---|
| TST U.S. Government Securities | 0.32 | 0.32 |
| | 0.13 | 0.13 |
| | 0.45 | 0.45 |
| TSF Putnam Diversified Income Portfolio* | 0.75 | 0.75 |
| | 0.15 | 0.15 |
| | 0.90 | 0.90 |
| Templeton Global Income Securities Fund Class I | 0.60 | 0.60 |
| | 0.11 | 0.11 |
| | 0.71 | 0.71 |
| TSF Smith Barney High Income Portfolio* | 0.60 | 0.60 |
| | 0.07 | 0.07 |
| | 0.67 | 0.67 |

*Group 3 Replacing Fund*

20. The investment objective of the TST Quality Bond Portfolio is current income, moderate capital volatility, and total return. The Portfolio invests in investment-grade debt securities and generally maintains an average duration of 5 years or less. Travelers Asset Management International Company LLC serves as investment adviser to the Portfolio. Quality Bond Portfolio pays a monthly investment management fee based on an annual rate of 0.32% of the average daily net assets of the Portfolio. Applicants propose to substitute shares of TST Quality Bond Portfolio for shares of the CitiStreet Diversified Bond Fund.

*Group 3 Replaced Fund*

21. The investment objective of the CitiStreet Diversified Bond Fund is maximum long-term total return (capital appreciation and income). The Fund invests in the following types of bonds, which are listed in order of importance, investment grade corporate debt, U.S. government bonds, foreign government bonds, mortgage-related securities, asset-backed securities and high-yield bonds. CitiStreet Funds Management LLC serves as investment adviser to the Fund. Western Asset Management Company, Salomon Brothers Asset Management and SsgA Funds Management each serve as a subadviser to the Fund. CitiStreet Diversified Bond Fund pays a monthly investment management fee based on an annual rate of 0.25% of the average daily net assets of the Fund and an additional subadvisory fee at a maximum rate of 0.35% (currently 0.20%) of the average daily net assets.

| | Net assets at year-end (in millions) | Expense ratio | Total return (in percent) |
|---|---|---|---|
| TST Quality Bond Portfolio: | | | |
| 1999 | $59.34 | 0.54 | 1.09 |
| 2000 | 73.37 | 0.49 | 6.97 |
| 2001 | 151.91 | 0.45 | 7.13 |
| CitiStreet Diversified Bond Fund | | | |
| 1999 | 254 | 0.60 | −2.74 |
| 2000 | 284 | 0.62 | 12.35 |
| 2001 | 531 | 0.65 | 6.86 |

[Amounts in percent]

| Fund | Before reimbursement or fee waiver | After reimbursement or fee waiver |
|---|---|---|
| TST Quality Bond Portfolio | 0.32 | 0.32 |
| | 0.13 | 0.13 |
| | 0.45 | 0.45 |
| CitiStreet Diversified Bond Fund | 0.45 | 0.45 |
| | 1.00 | 1.00 |
| | 1.45 | 1.45 |

*Group 4 Replacing Fund*

22. The investment objective of the Dreyfus Small Cap Portfolio is maximum capital appreciation. The Portfolio primarily invests in small cap companies with total market capitalizations of less than $2 billion at the time of purchase. The Portfolio invests in both growth stocks and value stocks and may include preferred stocks and convertible securities. Dreyfus serves as investment adviser to the Portfolio. Small Cap Portfolio pays a monthly management fee based on an annual rate of 0.75% of the average daily net assets of the Portfolio. Applicants propose to substitute shares of the Dreyfus Small Cap Portfolio for shares of the Delaware Small Cap Value Series.

*Group 4 Replaced Fund*

23. The investment objective of the Delaware Small Cap Value Series is capital appreciation. The Portfolio invests in the common stocks of companies generally having a market capitalization of less than $1.5 billion and whose market value appears low relative to their underlying value or future earnings potential. Delaware Management Company serves as investment adviser to the Portfolio. Small Cap Value Series pays a monthly investment management fee based on an annual rate of 0.75% of the first $500 million of average daily net assets, 0.70% on the next $500 million of average daily net assets, 0.65% on the next $1.5 billion of average daily net assets and 0.60% on average daily net assets in excess of $2.5 billion.

| | Net assets at year-end (in millions) | Expense ratio (in percent) | Total return (in percent) |
|---|---|---|---|
| Dreyfus Small Cap Portfolios: | | | |
| 1999 | $1,296 | 0.78 | 23.15 |
| 2000 | 688 | 0.78 | 13.31 |
| 2001 | 687 | 0.79 | −6.12 |
| Delaware Small Cap Value Series: | | | |
| 1999 | 95 | 0.85 | −4.86 |
| 2000 | 104 | 0.83 | 18.18 |
| 2001 | 153 | 0.84 | 11.84 |

[Amounts in percent]

| Fund | Before reimbursement or fee waiver | After reimbursement or fee waiver |
|---|---|---|
| Dreyfus Small Cap Portfolio | 0.75 | 0.75 |
| | 0.04 | 0.04 |
| | 0.79 | 0.79 |
| Delaware Small Cap Value Series | 0.75 | 0.73 |
| | 0.11 | 0.11 |
| | 0.86 | 0.84 |

24. Applicants propose to rationalize and consolidate their underlying Portfolio and Fund offerings among the Contracts. The rationalization and consolidation effort and resulting proposed substitutions arise from two factors. First, after the merger between Travelers Group Inc. and Citicorp, there were several asset management divisions/groups within the new company, Citigroup. Applicants state that a review process resulted in a plan to realign some of the underlying fund/portfolio offerings and/or to rationalize the offerings. Second, contemporaneously, Travelers Insurance and Travelers L & A conducted a reevaluation of the array of investment options offered within each Contract. The goal of the reevaluation was to identify and establish an updated, current array of investment options for the Contracts and respond to distributor feedback regarding offerings in various variable annuity and life insurance contracts. Travelers Insurance and Travelers L & A added several new options to the Contracts this past May 1 and, where possible, closed off the proposed replaced Portfolios and Funds to new investments as of that date. Applicants state that, in addition, as a result of the fund/portfolio rationalization, a number of mergers and liquidations of funds or portfolios managed by several Travelers Insurance affiliates have or will soon occur. Carrying out the proposed substitutions would complete the rationalization process.

25. Applicants believe that the rationalization will make the Contracts more competitive in both wholesale and retail markets and more efficient to administer and manage. Applicants believe that the proposed substitutions will improve Contract owner understanding of the investment options under the Contracts by reducing the potential for confusion arising from multiple underlying Portfolios or Funds of similar type and reduce the administrative burden of operating subaccounts by limiting the number that Applicants must maintain for each Contract.

26. Applicants believe that they have selected the proposed replaced Portfolios and Funds fairly. Applicants state that the Portfolios and Funds proposed for replacement, as well as the proposed replacing Portfolios and Funds, are a mix of affiliated and unaffiliated Portfolios and Funds. For each of the proposed substitutions the replacing Portfolio or Fund has a lower total expense ratios than the replaced Portfolio or Fund.

27. Also, Applicants note that the replacing Portfolio or Fund has average annual total returns that are better or comparable to the replacement Portfolio or Fund.

28. With respect to the Group 1 substitutions, Applicants also state that, although the AIM Capital Appreciation Portfolio (''AIM Capital'') and the OCC Equity Portfolio (''OCC Equity'') have

identical investment objectives, they pursue their objectives with somewhat different strategies. AIM Capital invests in common stocks of companies with new or innovative products, services, or processes and those with above-average long-term growth in earnings, whereas OCC Equity invests in undervalued equity securities. Still, Contract owners purchasing shares of the substituted Portfolio will be able to invest in stocks with the potential to increase significantly in value.

29. With respect to the Group 1 substitutions, Applicants further state that AIM Capital and the Montgomery Growth Fund (''Montgomery Growth'') have substantially identical investment objectives as well as very similar strategies for reaching their goals: Montgomery Growth invests in growth-oriented stocks and may invest in cash whereas AIM Capital invests primarily in common stocks and tries to select companies with new or innovative products, services, and processes. Applicants believe that, after the proposed substitution, Contract owners would continue to invest in a growth-oriented Portfolio that seeks domestic equity stocks of a wide variety of the companies with growth potential.

30. With respect to the Group 2 substitutions, Applicants state that one of the investment objectives of the TST U.S. Government Securities Portfolio (''TST Government'') is to have the highest credit quality in its portfolio, which is not an objective of the Templeton Global Income Securities Fund Class I (''Global Income''). Likewise, Global Income Securities has an objective of preservation of capital, not shared with TST Government. Both Portfolios, however, share the objective of seeking income as well as capital appreciation and both pursue these objectives by investing in debt securities.

31. As to the other Group 2 substitutions, Applicants contend that TST Government, Putnam Diversified Income Portfolio (''Putnam Diversified''), and Smith Barney High Income Portfolio (''Smith Barney Income'') have somewhat similar investment objectives in that they all seek current income; except that TST Government also seeks highest credit quality and total return, Putnam Diversified seeks preservation of capital, and Smith Barney Income has a secondary objective of capital appreciation. The Portfolios also have a similar strategy of achieving these objectives. Applicants state that, even though these three Portfolios focus their investments in different grades of debt securities, the proposed substitutions would not necessarily frustrate Contract owners' investment goals. Applicants believe that, after the proposed substitution, Contract owners will still have the ability to invest primarily in debt securities. Moreover, TST Government has a lower risk profile than Putnam Diversified or Smith Barney Income.

32. As to the Group 3 substitutions, Applicants contend that the investment objectives of the TST Quality Bond Portfolio (''Quality Bond'') are substantially similar to CitiStreet Diversified Bond Fund (''Diversified Bond''). Quality Bond and Diversified Bond both seek total return, which entails an element of capital appreciation along with income. Whereas Quality Bond invests only in investment-grade debt securities, Diversified Bond invests in a broad range of debt securities. Applicants believe that, after the proposed substitution, Contract owners would continue to invest in a Portfolio in which the primary component of its strategy is to seek current income by investing in debt securities.

33. As to the Group 4 substitutions, Applicants contend that the Dreyfus Small Cap Portfolio (''Dreyfus Small Cap'') and the Delaware Small Cap Value Series (''Delaware Small Cap'') have identical investment objectives. Applicants state that their investment strategies are similar except that Dreyfus Small Cap invests in growth stocks and stocks that cannot easily be categorized as either growth or value as well as value stocks. Applicants believe that, after the proposed substitution, Contract owners would still be invested in a Portfolio that invests in small cap companies that have prospects for future earnings.

34. Applicants state that, by supplements to the various May 1, 2001 prospectuses for the Contracts and the Accounts, all owners of the Contracts have been notified of Travelers Insurance's and Travelers L & A's intention to take the necessary actions, including seeking the order requested by the application, to substitute shares of the Portfolios and Funds as described therein. The supplements about the proposed substitutions advised Contract owners that from the date of the supplement, Travelers Insurance and Travelers L & A will not exercise any rights reserved under any Contract to impose restrictions on or charges for transfers until at least 30 days after the proposed substitutions. The supplements also advised Contract owners that if the proposed substitutions are carried out, then each Contract owner affected by a substitution will be sent a written notice (described below) informing them of the fact and details of the substitutions.

35. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's account value or death benefit or in the dollar value of his or her investment in any of the Accounts. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or Travelers Insurance's and Travelers L & A's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including brokerage commissions and legal, accounting, and other fees and expenses, will be paid by Travelers Insurance or Travelers L & A. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions. The proposed substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. Travelers Insurance and Travelers L & A will not exercise any right it may have under the Contracts to impose any restrictions on or charges for transfers (and will suspend any restrictions on transfers) under any of the Contracts for a period of at least 30 days following the substitutions.

36. In addition to the supplements distributed to owners of Contracts, within five days after the proposed substitutions, any Contract owners who are affected by a substitution will be sent a written notice informing them that the substitutions were carried out. The notice will also reiterate the fact that Travelers Insurance and Travelers L & A will not exercise any rights reserved by it under any of the Contracts to impose any restrictions on or charges for transfers (and will suspend any restrictions on transfers) until at least 30 days after the proposed substitutions. Current prospectuses for the new Funds or Portfolios will precede or accompany the notices.

37. As to all proposed substitutions, to the extent that the annualized expenses of a replacing Portfolio or Fund exceeds, for each fiscal period (such period being less than 90 days) during the twenty-four months following the substitutions, the 2001 net expense level of the Portfolio or Fund it replaces, Travelers Insurance and

Travelers L & A will, for each Contract outstanding on the date of the substitutions, make a corresponding reduction in separate account (or subaccount) expenses on the last day of each such fiscal period, such that the amount of the Portfolio's or Fund's expenses, together with those of the corresponding separate account (or subaccount) will, on an annualized basis, be no greater than the sum of the net expenses of the replaced Portfolio or Fund and the net expenses of the separate account (or subaccount) for the 2001 fiscal year. In addition, for twenty-four months following the substitutions, Travelers Insurance and Travelers L & A will not increase asset-based fees or charges under the Contracts.

38. Travelers Insurance and Travelers L & A are also seeking approval of the proposed substitutions from any state insurance regulators whose approval may be necessary or appropriate.

**Applicants' Legal Analysis**

1. Section 26(c) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to receive Commission approval before substituting the securities held by the trust. Prior to the enactment of this provision in 1970, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five days of the substitution. In 1966, the Commission, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted fund, recommended that the Act be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval.

2. Applicants state that all the Contracts, except one, expressly reserve for Travelers Insurance and Travelers L & A the right, subject to compliance with applicable law, to substitute shares of one Portfolio or Fund held by subaccount of an Account for another. Applicants state that the prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right.

3. Applicants state that Travelers Insurance and Travelers L & A reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of their separate accounts and to afford the opportunity to replace such shares where to do so could benefit itself and Contract owners.

4. Applicants maintain that Contract owners will be better served by the proposed substitutions. Applicants anticipate that the replacement of certain unpopular Portfolios or Funds will result in a Contract that is administered and managed more efficiently, and one that is more competitive with other variable products in both wholesale and retail markets. For all of the proposed substitutions, the new Portfolio or Fund historically has had comparable or superior investment performance than the Portfolios or Funds that it would replace. More significantly, each new Portfolio or Fund has had lower expenses in recent years than the Portfolios or Funds that it would replace. Applicants state that for all of the proposed substitutions, the new Portfolios or Funds are either substantially the same or more conservative in their investment objective(s) or strategies or both, than the Portfolios or Funds that they would replace. Likewise, Applicants believe that a majority of the new Portfolios or Funds have a substantially similar or lower investment risk profile than the Portfolios or Funds each would replace.

5. In addition to the foregoing, Applicants generally submit that the proposed substitutions meet the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

6. Applicants anticipate that Contract owners will be at least as well off with the proposed array of subaccounts to be offered after the proposed substitutions as they have been with the array of subaccounts offered before the substitutions. The proposed substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. If the proposed substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer accumulated values and contract values between and among the remaining subaccounts as they could before the proposed substitutions.

7. Applicants assert that each of the proposed substitutions is not the type of substitution which Section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer accumulation and contract values into other subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or other disadvantage. The proposed substitutions, therefore, will not result in the type of costly forced redemption which Section 26(c) was designed to prevent.

8. Applicants maintain that the proposed substitutions also are unlike the type of substitution which Section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their account values. They also select the specific type of insurance coverage offered by Travelers Insurance and Travelers L & A under their Contracts as well as numerous other rights and privileges set forth in the Contract. Contract owners may also have considered Travelers Insurance's and Travelers L & A's size, financial condition, type, and its reputation for service in selecting their Contract. These factors will not change because of the proposed substitutions.

9. Applicants submit that, for all the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

10. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company. Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and records filed under the Act; and (3) the proposed transaction is consistent with the general purposes of the Act.

11. Applicants submit that the terms of the proposed substitutions by

Travelers Insurance and Travelers L & A including the consideration to be paid and received, as described in the application, are reasonable and fair and do not involve overreaching on the part of any person concerned. In addition, Applicants submit that the proposed substitutions are consistent with the general purposes of the Act.

12. Applicants maintain that the terms of the proposed transactions, including the consideration to be paid and received by each Portfolio or Fund involved, are reasonable, fair and do not involve overreaching principally because the transactions do not cause owners' interests under a Contract to be diluted and because the transactions will conform with all but one of the conditions enumerated in Rule 17a–7. The proposed transactions will take place at relative net asset value with no change in the amount of any Contract owner's Contract or cash value or death benefit or in the dollar value of his or her investment in any of the Accounts. Even though Travelers Insurance, Travelers L & A, TSF, TST and CitiStreet may not rely on Rule 17a–7, Applicants believe that the Rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons.

13. Applicants state that the board of directors of TSF and CitiStreet and the board of trustees of TST have adopted or will adopt procedures, as required by paragraph (e)(1) of Rule 17a–7, pursuant to which the Portfolios or Funds of each may purchase and sell securities to and from their affiliates. Travelers Insurance, Travelers L & A, TSF, TST and CitiStreet will carry out the proposed substitutions in conformity with all of the conditions of Rule 17a–7 and TSF's, TST's and CitiStreet's procedures thereunder, except that the consideration paid for the securities being purchased or sold may not be entirely cash. Nevertheless, the circumstances surrounding the proposed substitutions will be such as to offer the same degree of protection to each Portfolio of TSF and the affected Funds of TST and CitiStreet from overreaching that Rule 17a–7 provides to them generally in connection with their purchase and sale of securities under that Rule in the ordinary course of their business. In particular, because of the circumstances surrounding the proposed Travelers Insurance and Travelers L & A substitutions, TSF, TST, CitiStreet and the other affected Portfolios could not ''dump'' undesirable securities on TST or TSF, or retain its desirable securities for themselves. Nor can Travelers Insurance and Travelers L & A effect the proposed transactions at a price that is disadvantageous to any TSF Portfolio, TST Fund or CitiStreet Fund. Although the transactions may not be entirely for cash, each will be effected based upon (1) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a–7, and (2) the net asset value per share of each Portfolio or Fund involved valued in accordance with the procedures disclosed in the respective Management Company's registration statement and as required by Rule 22c–1 under the Act. No brokerage commission, fee, or other remuneration will be paid to any party in connection with the proposed transactions. In addition, the board of directors of TSF and the board of trustees of TST will subsequently review these proposed substitutions and make the determinations required by paragraph (e)(3) of Rule 17a–7.

14. Applicants state that the proposed redemption of shares of Putnam Diversified, Smith Barney Income, Montgomery Growth, OCC Equity, Diversified Bond and Global Income is consistent with the investment policy of each, as these are recited in its registration statement, provided that the shares are redeemed at their net asset value in conformity with Rule 22c–1 under the Act.

15. Applicants state that the sale of shares of Quality Bond, AIM Capital, and TST Government as contemplated by the proposed substitution, is consistent with the investment policy of each, as recited in its registration statement, provided that (1) the shares are sold at their net asset value, and (2) the portfolio securities are of the type and quality that the affected portfolios has acquired with the proceeds from share sales had the shares been sold for cash. To assure that the second of these conditions is met, Travelers Insurance and Travelers L & A will examine the portfolio securities being offered to Quality Bond, AIM Capital, and TST Government and accept only those securities as consideration for shares that it would have acquired for in a cash transaction.

16. Applicants assert that the proposed substitutions, as described herein, are each consistent with the general purposes of the Act as stated in the Findings and Declaration of Policy in section 1 of the Act. The proposed transactions do not present any of the conditions or abuses that the Act was designed to prevent. In particular, section 1(b)(2) and (3) of the Act state, among other things, that the national public interest and the interest of investors are adversely affected ''when investment companies are organized, operated, managed, or their portfolio securities are selected in the interest of directors, officers, investment advisers, depositors, or other affiliated persons thereof, * * * or in the interests of other investment companies or persons engaged in other lines of business, rather than in the interest of all classes of such companies' security holders; * * * when investment companies issue securities containing inequitable or discriminatory provisions, or fail to protect the preferences and privileges of the holders of their outstanding securities.'' Applicants assert that the conditions found in Rule 17a–7 prevent the abuses described in section 1(b)(2) and (3) of the Act. Applicants further assert that, for all the reasons stated in section IV of the application, the abuses described in section 1(b)(2) and (3) of the Act will not occur in connection with the proposed substitutions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–16061 Filed 6–25–02; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–25618; 812–12662]**

## AXP Partners Series, Inc., et al.; Notice of Application

June 19, 2002.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act, under section 6(c) for an exemption from sections 12(d)(3) and 17(e) of the Act and rule 17e–1 under the Act, and under section 10(f) of the Act for an exemption from section 10(f).

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain registered open-end management investment companies advised by several investment advisers to engage in principal and brokerage transactions with a broker-dealer affiliated with one of the investment advisers and to purchase securities in certain underwritings. The transactions would be between the broker-dealer and a portion of the investment company's

portfolio not advised by the adviser affiliated with that broker-dealer. The order also would permit these investment companies not to aggregate certain purchases from an underwriting syndicate in which an affiliated person of one of the investment advisers is a principal underwriter. Further, applicants request relief to permit a portion of an investment company's portfolio to purchase securities issued by an investment adviser or an affiliated person of an investment adviser to another portion, subject to the limits in rule 12d3–1 under the Act.

**APPLICANTS:** AXP Partners Series, Inc., AXP Partners International Series, Inc., AXP Strategy Series, Inc. (each, an ''AXP Fund,'' and each underlying series, an ''AXP Portfolio''), AXP Variable Portfolio—Partners Series, Inc. (the ''Life Fund,'' and the underlying series, the ''Life Portfolio'') (the AXP Funds and the Life Funds, the ''Funds'') (the AXP Portfolios and the Life Portfolio, the ''Portfolios''), American Express Financial Corporation (''AEFC'') and IDS Life Insurance Company (''IDS Life'').

*Filing Dates:* The application was filed on October 12, 2001 and amended on June 19, 2002.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 15, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Funds, 901 Marquette Avenue South, Suite 2810, Minneapolis, MN 55402–3268. AEFC and IDS Life, 200 AXP Financial Center, Minneapolis, MN 55474.

**FOR FURTHER INFORMATION CONTACT:** John L. Sullivan, Senior Counsel, at (202) 942–0681, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

**Applicants' Representations**

1. Each Fund is a Minnesota corporation registered under the Act as an open-end management investment company. The Funds offer several Portfolios with different investment objectives and policies. Shares of the Life Portfolio are sold to IDS Life and its subsidiaries as a funding option for variable annuity contracts and variable life insurance policies issued by IDS Life and its subsidiaries.

2. AEFC is a Delaware corporation registered as an investment adviser under the Investment Advisers Act of 1940 and serves as investment adviser to the AXP Portfolios. A subsidiary of AEFC, IDS Life is a stock life insurance company organized under the laws of Minnesota and manages the Life Portfolio. IDS Life has entered into an advisory agreement with AEFC pursuant to which AEFC furnishes investment advice to the Life Portfolio.[1] The Adviser allocates the assets of each Portfolio among subadvisers (each, a ''Subadviser''). Each Subadviser has discretion to purchase and sell securities for its portion of a Portfolio in accordance with that Portfolio's objectives, policies and restrictions. As compensation for its services, each Subadviser is paid a fee by AEFC out of the management fee received by AEFC from the Portfolios.

3. Applicants request relief to permit: (a) Any broker-dealer registered under the Securities Exchange Act of 1934 that itself serves as a Subadviser to, or is an affiliated person of a Subadviser to a Portfolio (the broker-dealer, an ''Affiliated Broker-Dealer'; the Subadviser, an ''Affiliated Subadviser'') to engage in principal transactions with a portion of the Portfolio (''Portion'') that is advised by another Subadviser that is not an affiliated person of the Affiliated Broker-Dealer or the Affiliated Subadviser (the Subadviser, an ''Unaffiliated Subadviser'; the Portion, an ''Unaffiliated Portion'') [2]; (b) an Affiliated Broker-Dealer to provide brokerage services to an Unaffiliated Portion, and the Unaffiliated Portion to use such brokerage services, without complying with rule 17–1(b) and (d) under the Act; (c) an Unaffiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Subadviser or a person of which an Affiliated Subadviser is an affiliated person (''Affiliated Underwriter''); (d) a portion of the Portfolio advised by an Affiliated Subadviser (''Affiliated Portion'') to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, in accordance with the conditions of rule 10f–3 under the Act, except that paragraph (b)(7) of the rule would not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion; and (e) an Unaffiliated Portion to acquire securities issued by an Affiliated Subadviser or an affiliated person of an Affiliated Subadviser engaged in securities-related activities (''Securities Affiliate''), subject to the limits in rule 12d3–1 under the Act.

4. Applicants request that the requested relief apply to the Funds and any existing or future registered management investment company or its series advised by (a) AEFC or any entity controlling, controlled by, or under common control with AEFC, and (b) at least one Unaffiliated Subadviser registered under the Advisers Act or exempt from registration (such investment company or its series included in the term ''Portfolio''). Applicants also request that the relief apply to any existing or future entity that serves as an Affiliated Subadviser, Affiliated Broker-Dealer or Affiliated Underwriter with respect to a Portfolio relying on the order. Any investment company that currently intends to rely on the order is named as an applicant. Any existing or future entity that relies on the order in the future will comply with the terms and conditions of the application.

**Applicants' Legal Analysis**

*A. Principal Transactions Between an Unaffiliated Portion and an Affiliated Broker-Dealer*

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person of, promoter of, or principal underwriter for such company, or any affiliated person of an affiliated person (''second-

[1] For purposes of the application, the term ''Adviser'' is used to mean AEFC, with respect to the AXP Funds and the AXP Portfolios, and IDS Life and AEFC jointly, with respect to the Life Fund and the Life Portfolio.

[2] The terms ''Unaffiliated Subadviser,'' ''Subadviser,'' and ''unaffiliated Portion'' include the Adviser and the Portion directly advised by the Adviser, respectively, provided that the Adviser manages its Portion independently of the Portions managed by other Subadvisers to the Portfolio, and the Adviser does not control or influence any other Subadviser's investment decisions for its Portion the Adviser does not currently directly advise nay Portion of any Portfolio.

tier affiliate''), promoter, or principal underwriter. Section 2(a)(3)(E) of the Act defines an affiliated person to be any investment adviser of an investment company, and section 2(a)(3)(C) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with such person. Applicants state that an Affiliated Subadviser would be an affiliated person of a Portfolio, and an Affiliated Broker-Dealer would be either an Affiliated Subadviser or an affiliated person of the Affiliated Subadviser, and thus a second-tier affiliate of a Portfolio, including the Unaffiliated Portion. Accordingly, applicants state that any transactions to be effected by an Unaffiliated Subadviser on behalf of an Unaffiliated Portion of a Portfolio with an Affiliated Broker-Dealer are subject to the prohibitions of section 17(a).

2. Applicants seek relief under sections 6(c) and 17(b) to exempt principal transactions prohibited by section 17(a) because an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion as a result of the fact that an Affiliated Subadviser is the Subadviser to another Portion of the same Portfolio. The requested relief would not be available if the Affiliated Broker-Dealer (except by virtue of serving as a Subadviser to a Portion) is an affiliated person or a second-tier affiliate of the Adviser, the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Portion, or any principal underwriter, promoter, officer, director or employee of the Portfolio.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

4. Applicants contend that section 17(a) is intended to prevent persons who have the power to control an investment company from using that power to the person's own financial advantage. Applicants assert that when the person acting on behalf of an investment company has no direct or indirect financial interest in a party to a principal transaction, the abuses that section 17(a) is designed to prevent are not present. Applicants state that if an Unaffiliated Subadviser purchases securities on behalf of an Unaffiliated Portion in a principal transaction with an Affiliated Broker-Dealer, any benefit that might inure to the Affiliated Broker-Dealer would not be shared by the Unaffiliated Subadviser. In addition, applicants state that Subadvisers are paid on the basis of a percentage of the value of the assets allocated to their management. The execution of a transaction to the disadvantage of the Unaffiliated Portion would disadvantage the Unaffiliated Subadviser to the extent that it diminishes the value of the Unaffiliated Portion. Applicants further submit that the Adviser's power to dismiss a Subadviser or to change the portion of a Portfolio's assets allocated to a Subadviser reinforces the Subadviser's incentive to maximize the investment performance of its own Portion.

5. Applicants state that each Subadviser's contract assigns it responsibility to manage a Portion. Each Subadviser is responsible for making independent investment and brokerage allocation decisions based on its own research and credit evaluations. Applicants represent that the Adviser does not dictate brokerage allocation or investment decisions nor does it have the contractual right to do so, except with respect to a Portion advised directly by the Adviser. Applicants contend that, in managing a Portion, each Subadviser acts for all practical purposes as though it is managing a separate investment company.

6. Applicants state that the proposed transactions will be consistent with the policies of the Portfolio involved, since each Unaffiliated Subadviser is required to manage its Portion in accordance with the investment objectives and policies described in the registration statement. Applicants also assert that permitting the transactions will be consistent with the general purposes of the Act and in the public interest because the ability to engage in the transactions increases the likelihood of a Portfolio achieving best price and execution on its principal transactions, while giving rise to none of the abuses that the Act was designed to prevent.

*B. Payment of Brokerage Compensation by an Unaffiliated Portion to an Affiliated Broker-Dealer*

1. Section 17(e)(2) of the Act prohibits an affiliated person or a second-tier affiliate of a registered investment company from receiving compensation for acting as broker in connection with the sale of securities to or by the investment company if the compensation exceeds the limits prescribed by the section unless otherwise permitted by rule 17e–1 under the Act. Rule 17e–1 sets forth the conditions under which an affiliated person or a second-tier affiliate of an investment company may receive a commission which would not exceed the ''usual and customary broker's commission'' for purposes of section 17(e)(2). Rule 17e–1(b) requires the investment company's board of directors, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act, to adopt certain procedures and to determine at least quarterly that all transactions effected in reliance on the rule during the preceding quarter complied with [the company's rule 17e–1] procedures. Rule 17e–1(d) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e–1.

2. As discussed above, applicants state that an Affiliated Broker-Dealer is either an affiliated person or a second-tier affiliate of an Unaffiliated Portion and thus subject to section 17(e). Applicants request an exemption under section 6(c) from section 17(e) and rule 17e–1 to the extent necessary to permit an Unaffiliated Portion to pay brokerage compensation to an Affiliated Broker-Dealer acting as broker in the ordinary course of business in connection with the sale of securities to or by such Unaffiliated Portion, without complying with the requirements of rule 17e–1(b) and (d). The requested exemption would apply only where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another Portion of the same Portfolio. The relief would not apply if the Affiliated Broker-Dealer (except by virtue of serving as Subadviser to a Portion) is an affiliated person or a second-tier affiliate of the Adviser, the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Portion, or any principal underwriter, promoter, officer, director or employee of the Portfolio.

3. Applicants believe that the proposed brokerage transactions involve no conflicts of interest or possibility of self-dealing and will meet the standards of section 6(c). Applicants assert that because the financial interests of an Unaffiliated Subadviser are directly aligned with the interests of the Unaffiliated Portion it advises, an Unaffiliated Subadviser will enter into brokerage transactions with Affiliated Broker-Dealers only if the fees charged are reasonable and fair compared to those charged by other brokers in connection with comparable transactions involving similar securities during a comparable period of time. Applicants also note that an Unaffiliated Subadviser has a fiduciary duty to obtain best price and execution for the Unaffiliated Portion.

*C. Purchases of Securities From Offerings With Affiliated Underwriters*

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser or employee of the company, or an affiliated person of any of those persons. Section 10(f) also provides that the Commission may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f–3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f–3 limits the securities purchased by the investment company, or by two or more investment companies having the same investment adviser, to 25% of the principal amount of the offering of the class of securities.

2. Applicants state that each Subadviser to a Portfolio, although under contract to manage only a Portion, is considered an investment adviser to the Portfolio itself, not just the Portion it manages. Therefore, applicants believe that all purchases of securities by the Subadviser on behalf of the Portfolio from an underwriting syndicate, a principal underwriter of which is another Subadviser to the same Portfolio or a person of which such other Subadviser is an affiliated person, would be subject to section 10(f).

3. Applicants request relief under section 10(f) from that section to permit an Unaffiliated Portion to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent those provisions apply solely because an Affiliated Subadviser is an investment adviser to the Portfolio. The requested relief would not be available if the Affiliated Underwriter (except by virtue of serving as Subadviser to a Portion) is an affiliated person or a second-tier affiliate of the Adviser, the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Portion, or any principal underwriter, promoter, officer, director or employee of the Portfolio. Applicants also seek relief from section 10(f) to permit an Affiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase will be in accordance with the conditions of rule 10f–3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

4. Applicants state that section 10(f) was adopted in response to concerns about the ''dumping'' of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from its underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Portfolios because, in part, a decision by the Subadviser to a Portion to purchase securities from an underwriting syndicate, a principal underwriter of which is a Subadviser to a different Portion of the same Portfolio or a person of which such other Subadviser is an affiliated person, involves no potential for ''dumping.'' In addition, applicants assert that aggregating purchases would serve no purpose because there is no collaboration among Subadvisers to the same Portfolio, and any common purchases by an Affiliated Subadviser and an Unaffiliated Subadviser would be coincidence.

*D. Purchases of Securities of Securities Affiliates by an Unaffiliated Portion*

1. Section 12(d)(3) of the Act, in relevant part, generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting. Rule 12d3–1 under the Act exempts certain transactions from the prohibitions of section 12(d)(3) if specified conditions are met. One of these conditions, paragraph (c) of rule 12d3–1 generally provides that the exemption provided by the rule is not available when the issuer of the securities is the investment company's investment adviser, promoter, or principal underwriter, or an affiliated person of the investment company's investment adviser, promoter, or principal underwriter.

2. Applicants state that each Subadviser to a portion of a Portfolio is considered to be an investment adviser to the entire Portfolio. Thus, an Unaffiliated Portion would not be able to purchase securities issued by a Securities Affiliate (which would include another Subadviser to the same Portfolio or an affiliated person of that Subadviser) in reliance on rule 12d3–1 because of paragraph (c). Applicants request relief under section 6(c) from section 12(d)(3) to allow any Unaffiliated Subadviser for an Unaffiliated Portion to acquire securities issued by a Securities Affiliate within the limits of rule 12d3–1. The requested relief would only apply where a Securities Affiliate is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion within the meaning of rule 12d3–1(c) solely because an Affiliated Subadviser is the Subadviser to another portion of the same Portfolio.

3. Applicants state that the proposed transactions do not raise the conflicts of interest that rule 12d3–1(c) was designed to address because of the nature of the affiliation between a Securities Affiliate and the Unaffiliated Portion. Applicants submit that each Subadviser acts independently of the other Subadvisers in making investment decisions for the assets allocated to its portion of the Portfolio. Furthermore, applicants submit that prohibiting an Unaffiliated Portion from purchasing securities issued by a Securities Affiliate could harm the interests of a Portfolio's shareholders by preventing the Unaffiliated Subadviser from achieving optimal investment results.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Portfolio relying on the requested order will be advised by an Affiliated Subadviser and at least one Unaffiliated Subadviser and will be operated in the manner described in the application.

2. No Affiliated Subadviser, Affiliated Broker-Dealer, Affiliated Underwriter or Securities Affiliate (except by virtue of serving as Subadviser to a Portion) will be an affiliated person or a second-tier affiliate of the Adviser, any Unaffiliated Subadviser, or any principal underwriter, promoter, officer, director or employee of a Portfolio.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadviser concerning allocation of principal or brokerage transactions.

4. No Affiliated Subadviser will participate in any arrangement whereby the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

5. With respect to purchases of securities by an Affiliated Portion during the existence of any underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f–3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

6. With respect to purchases by an Unaffiliated Portion of securities issued by a Securities Affiliate, the conditions of rule 12d3–1 will be satisfied except for paragraph (c) to the extent such paragraph is applicable solely because such issuer is an Affiliated Subadviser or an affiliated person of an Affiliated Subadviser.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–16062 Filed 6–25–02; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46086; File No. SR–Amex–2002–39]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Revise and Clarify the Income Based Original Listing Standard

June 18, 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 25, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval to the proposed rule change.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Section 101 of the Amex Company Guide to revise and clarify its income-based original listing standard. The text of the proposed rule change appears below. New language is italicized.

* * * * *

**CRITERIA FOR ORIGINAL LISTING**

**Section 101. GENERAL**

No Change.

(a) REGULAR LISTING CRITERIA

1. Size—Stockholders' equity of at least $4,000,000.

2. Income—Pre-tax income *from continuing operations* of at least $750,000 in its last fiscal year, or in two of its last three fiscal years.

Additional criteria applicable to various classes of securities and issuers are set forth below. Applicants should also consider the policies regarding conflicts of interest, independent directors and voting rights described in §§ 120–125.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

I. Purpose

Section 101 of the Amex Company Guide contains a number of quantitative guidelines under which listing applicants are evaluated. Pursuant to Section 101(a)(2) of the Amex Company Guide, a listing applicant is subject to a pre-tax income guideline of at least $750,000 in its last fiscal year, or in two of its last three fiscal years.[3] The Amex represents that this income guideline is intended to provide a measurement of an applicant's financial performance in evaluating its listing eligibility, but makes no provision for exclusion of discontinued operations, extraordinary items or the cumulative effect of changes in accounting principles. Because discontinued operations, extraordinary items, or the cumulative effect of changes in accounting principles are not incurred in the ordinary course of business, the Exchange does not believe such items are relevant to an evaluation of an issuer's true financial situation and performance. Accordingly, the Exchange proposes to amend Section 101(a)(2) of the Amex Company Guide to use the term ''pre-tax income from continuing operations'' instead of ''pre-tax income.'' The Exchange represents that compliance with this term would be determinable in accordance with Generally Accepted Accounting Principals and, therefore, would be a transparent standard.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[4] in general and furthers the objectives of Section 6(b)(5) of the Act[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Exchange believes that the proposed change to the income-based

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An applicant can also qualify for listing based on compliance with one of the other listing standards contained in Section 101.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

listing standard would provide a better and transparent measure of an issuer's financial performance in evaluating its listing eligibility.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–Amex–2002–39 and should be submitted by July 17, 2002.

**IV. Commission Findings and Order Granting Accelerated Approval to Proposed Rule Change**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission believes the proposed rule change is consistent with the Section 6(b)(5) of the Act[7] requirement that the rules of an exchange be designed to facilitate transactions in securities, 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that by addressing the effects of discontinued operations, extraordinary items, and the cumulative effect of changes in accounting principles not incurred in the ordinary course of business, the proposal should permit the Amex to better evaluate a listing applicant's financial situation and performance. The Commission notes that the scope of the proposed rule change is limited by the requirement that compliance with the proposed changes be determinable in a manner consistent with Generally Accepted Accounting Principles. Further, the Commission notes that another self-regulatory organization recently changed its rules to establish a substantially similar standard[8] and no comments were received on that proposal. Therefore, the Commission believes that the proposed rule change raises no new significant regulatory issues for consideration.

The Amex has requested that the Commission expedite review of, and grant accelerated approval to, this proposal, pursuant to Section 19(b)(2) of the Act.[9] The Commission finds good cause, consistent with Section 19(b)(2) of the Act,[10] to approve the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. As discussed above, the proposal is substantially similar to another self-regulatory organization's rule and, thus, raises no new significant regulatory issues. Further, accelerated approval of this proposal should permit the Amex to apply the revised listing standard to new issuers without delay. Accordingly, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,[11] to approve the proposal on an accelerated basis.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–Amex–2002–39) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–16063 Filed 6–25–02; 8:45 am]

**BILLING CODE 8010–01–P**

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Securities Exchange Act Release Nos. 45431 (February 11, 2002), 67 FR 7436 (February 19, 2002) (SR–NASD–2002–16).

[9] 15 U.S.C. 78s(b)(2).

[10] *Id.*

[11] *Id.*

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46093; File No. SR–GSCC–2002–02]**

## Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Changes To Alter Trade Data Submission Requirements for Netting and Comparison-Only Members

June 20, 2002.

**I. Introduction**

On February 11, 2002, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–GSCC–2002–02 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on March 19, 2002.[2] For the reasons discussed below, the Commission is approving the proposed rule changes.

**II. Description**

GSCC has proposed to amend its rules to alter trade data submission requirements for both Netting[3] Members and Comparison-Only[4] Members. Based on an analysis conducted by GSCC to discover the cause of lower-than-desired buy/sell comparison rates, GSCC has determined that changes to its trade submission requirements would boost GSCC's trade

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 45548 (March 12, 2002), 67 FR 12630.

[3] A Netting member is a Member of GSCC that is a member of both the Comparison System and the Netting System. The Comparison System performs trade comparison which consists of the reporting, validating, and in some cases, matching by GSCC of the long and short sides of a securities trade, including a repo transaction, to ensure that the details of such trade are in agreement between the parties. Trade detail comparison is the first step in the clearance and settlement process for securities transactions. The Netting System is a system for aggregating and matching offsetting obligations resulting from trades, including repo transactions, submitted by or on behalf of netting members.

[4] A Comparison-Only Member is a member of GSCC that is a member only of the Comparison System.

comparison rates [5] and thereby should decrease risks associated with uncompared trades not settling.

In the course of its analysis, GSCC discovered that while comparison rates for repo transactions approached 97 percent, comparison rates for buy/sell transactions were consistently lower at 95 percent. GSCC determined that there were four main reasons for this trend. First, many trades submitted to GSCC are not submitted as originally executed between members. Many trades are either ''bunched'' or ''broken down'' resulting in some trades not being compared.[6] While GSCC employs certain tolerances for required data fields in order to aid comparison, some bunched or broken down trade scenarios fall outside of GSCC's par summarization tolerances.[7]

The second reason for uncompared trades is when GSCC members fail to notify GSCC of their intent to submit trades for Executing Firms.[8] GSCC keeps over 400 Executing Firms and their corresponding symbols on a master list which is available to all members. GSCC should be notified in advance of a member's intent to submit trade data on behalf of an Executing Firm so that the master list can be updated. However, member firms often fail to so notify GSCC, they submit trade data without the proper Executing Firm symbol, or they fail to submit Executing Firm data completely. These trades may show up in GSCC's systems as uncompared.

A third reason for uncompared trades is that GSCC does not currently require its members to submit to it all types of trade data. As a result, some firms do not submit to GSCC for comparison trades that are executed and settled on the same day (cash trades). The fourth reason for uncompared trades occurs because Comparison-Only Members, who do not settle their trades through GSCC, do not submit their trade data to GSCC on a consistent basis.

The proposed rule changes would increase comparison rates by effectively eliminating the situations described above. Specific proposed rule changes would apply to both buy/sell and repo transactions as follows:

(i) Each Comparison-Only Member would be required to submit data to GSCC on all buy/sell or repo trades executed by such member with any other Comparison-Only Member or Netting Member of GSCC.

(ii) Each Netting Member would be required to submit data to GSCC on all buy/sell or repo trades executed by such member with any other Comparison-Only Member.[9]

(iii) Each GSCC member would be required to submit data to GSCC on all trades with other GSCC members executed and settled on the same day.

(iv) Each GSCC member would be required to submit trade data exactly as executed up to a $50 million dollar cap. Trades for over $50 million could be submitted in $50 million pieces with a ''tail'' for any remainder.[10]

(v) Each GSCC member would be required to inform GSCC of all Executing Firms on whose behalf they submit trade data for placement on GSCC's master list and to submit to GSCC all trades executed on behalf of an Executing Firm on GSCC's master list with the appropriate symbol. In addition, each GSCC member would be required to inform GSCC of those Executing Firms that should be deleted from the master list.

In the event that a member does not comply with the new trade submission rules, GSCC has certain rights to enforce compliance. In addition to automatically placing a Netting Member or a Comparison-Only Member on surveillance status, GSCC would have the right to increase the required Clearing Fund deposit of a Netting Member pursuant to GSCC Rule 4, Section 3 and at GSCC's discretion notify the Netting Member or Comparison-Only Member's appropriate regulatory authority of its non-compliance with GSCC's rules. GSCC expects to submit a rule filing at a later date giving GSCC the authority to assess fees to members who do not comply with the trade data submission requirements outlined in these rules.

## III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[11] The Commission finds that GSCC's proposed rule change is consistent with this Section because by boosting GSCC's trade comparison rates it will promote the prompt and accurate clearance and settlement of securities transactions.

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–2002–02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–16059 Filed 6–25–02; 8:45 am]

**BILLING CODE 8010–01–P**

[5] Comparison rates are derived by dividing the total number of buy/sell trades compared by the total number of buy/sell trades submitted.

[6] For example, Firm A submits one trade for $30 million, and Firm B ''breaks down'' the trade into three $10 million pieces. Alternatively, Firm A and Firm B may execute five separate trades each worth $10 million. Firm A submits each trade separately while Firm B ''bunches'' the five trades into one $50 million piece. In both of these examples, the trades will not be compared.

[7] In the event of a mismatch of final money, GSCC has established trade tolerances which allow for differences in trade values (or par summarization) submitted by members on each side of one transaction. For a trade to be compared, par summarization must be on a 2:1 or 2:2 ratio. For example, where Firm A submits a trade in one piece of $50 million and Firm B submits two pieces of $25 million each, this transaction would fall within the 2:1 par summarization tolerance. If Firm A were to submit two pieces of $25 million each and Firm B submitted two pieces of $20 million and $30 million, this would fall within GSCC's 2:2 par summarization tolerance. Assuming that the final money matches, both of these trades will be compared by GSCC.

[8] An Executing Firm is a firm that is not a member of GSCC whose trade data is submitted to GSCC by a GSCC member.

[9] GSCC Rule 11 already requires Netting Members to submit all trade data for transactions with other Netting Members.

[10] GSCC does not accept trade data for transactions over $50 million except for GCF Repo transactions.

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46092; File No. SR–NYSE–2002–01]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Removing Separate Exchange Requirements Regarding the Use of Consent Solicitations

June 19, 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 January 3, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the NYSE. The NYSE submitted

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Amendment No. 1 to the proposed rule change on May 23, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NYSE proposes to amend Section 306 of the NYSE Listed Company Manual to remove separate NYSE requirements regarding the use of consent solicitations. The text of the proposed rule change is below. New language is italicized; deleted language is in brackets.

**Listed Company Manual**

*306.00 Consents*

[The use of consents in lieu of special meetings as proper authorization for shareholder approval of corporate action may be appropriate under certain circumstances. When it appears that a special meeting of shareholders is not necessary, requests from listed companies to use consents will be reviewed and approved by the Exchange on an individual basis if they conform with these guidelines:

A record date is used.

Consent material is sent to all shareholders.

Corporate action is not to be taken until the solicitation period has expired—even if the required vote is received earlier.

A 30-day solicitation period is recommended and a minimum of 20 days is required.

Consent material conforms to normal proxy statement disclosure standards. If, in the opinion of the Exchange, there is an important reason why an actual meeting should be held, the use of consents will not be approved.]

*Listed companies may use consents in lieu of special meetings of shareholders as permitted by applicable law. The Exchange has no separate requirements with respect to the solicitation of such consents, but listed companies must comply with applicable state and federal law and rules (including interpretations thereof), including, without limitation, SEC Regulations 14A and 14C.*

[3] In Amendment No. 1, the Exchange: (1) added the following language to the proposed rule text: ''(including interpretations thereof), including, without limitation,'' and (2) added language to the purpose section clarifying the two options available to listed companies for obtaining shareholder approval. *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 22, 2002 (''Amendment No. 1'').

**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 Exchange has long required that listed companies solicit proxies in connection with all shareholder meetings. Section 306 of the Listed Company Manual specifies that companies are permitted to use shareholder consents in lieu of special meetings, although it provides that the corporate action should not be taken until the consent solicitation period has expired.

In 1964, the Exchange Act was amended to expand federal proxy regulation to cover ''information statements,'' which are disclosure documents used to inform shareholders of corporate action that has been taken without the general solicitation of their proxy, consent, or authorization. This can arise when a corporation is permitted under state law to take action without a meeting upon the written consent of a specified percentage of shareholders, and the corporation has an individual or a small group that holds a sufficient percentage to effect the action involved.

Since the Exchange permitted the listing of dual class capitalization companies, from time to time some Exchange-listed companies have been in a position to, and desired to, take action by written consent of the holders of a majority of their voting stock in lieu of a special meeting of shareholders. Such a company would be required by Section 14(c) of the Exchange Act and Regulation 14C thereunder to furnish to all shareholders an information statement that contains the same disclosure as would have been provided to those shareholders had they been sent a proxy or consent solicitation. Regulation 14C also specifies that the information statement must be sent at least 20 days prior to the earliest date the corporate action can be taken. Nonetheless, given the requirements of Section 306 of the Manual, at least in those situations where the shareholder vote is one required by Exchange rules (*e.g.,* by 312.03 of the Manual), the Exchange has required such companies to actually solicit consents from all shareholders, which involves the additional logistics of collecting and tabulating the shareholder votes. These companies typically find this requirement onerous and without substantive justification, given that the outcome of the vote is a foregone conclusion and the information furnished to shareholders would be the same in any event.

The Exchange is now of the opinion that those objections are credible and that it is appropriate to align the Exchange with what has become an accepted corporate practice that has long been sanctioned by state and federal regulation. The federal proxy rules insure that shareholders are provided all the information material to the corporate action being taken, regardless of whether the corporation must solicit shareholder approval generally, or is able to proceed based on the written consent of a smaller group. Accordingly, the Exchange proposes to modify Section 306 to eliminate the separate Exchange requirements with respect to use of consents in lieu of special meetings. As a result, listed companies will be permitted to either (1) hold a special meeting of shareholders, or (2) use consents in lieu of special meetings when and as permitted by applicable law.

The Exchange would, however, retain its traditional policy that listed companies may not use written consents in lieu of the *annual* meeting of shareholders at which directors are to be elected.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general and furthers the objectives of Section 6(b)(5),[5] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market 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

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

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*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule change, as amended, 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 NYSE. All submissions should refer to File No. SR–NYSE–2002–01 and should be submitted by July 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–16064 Filed 6–25–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3424]**

### State of Colorado; Disaster Loan Areas

As a result of the President's major disaster declaration on June 19, 2002, I find that Adams, Alamosa, Arapahoe, Archuleta, Baca, Bent, Boulder, Broomfield, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Denver, Dolores, Douglas, Eagle, Elbert, El Paso, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jefferson, Kiowa, Kit Carson, Lake, La Plata, Las Animas, Lincoln, Mesa, Mineral, Moffat, Montezuma, Montrose, Otero, Ouray, Park, Pitkin, Pueblo, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Summit, Teller, Washington and Yuma Counties and Broomfield City, Denver City, the Southern Ute Reservation and the Ute Mountain Reservation in the State of Colorado constitute a disaster area due to damages caused by wildfires occurring on April 23, 2002 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 18, 2002 and for economic injury until the close of business on March 19, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

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: Jackson, Larimer, Logan, Morgan, Phillips, Prowers and Weld Counties in the State of Colorado; Apache County in the State of Arizona; Cheyenne, Greeley, Hamilton, Morton, Sherman, Stanton and Wallace Counties in the State of Kansas; Chase and Dundy Counties in the State of Nebraska; Cimarron County in the State of Oklahoma; Colfax, Rio Arriba, San Juan, Taos and Union Counties in the State of New Mexico; Daggett, Grand, San Juan and Uintah Counties in the State of Utah; and Carbon and Sweetwater Counties in the State of Wyoming.

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 342405. For economic injury the number is 9Q1900 for Colorado; 9Q2000 for Arizona; 9Q2100 for Kansas; 9Q2200 for Nebraska; 9Q2300 for Oklahoma; 9Q2400 for New Mexico; 9Q2500 for Utah; and 9Q2600 for Wyoming.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 19, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02–16054 Filed 6–25–02; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3425]**

### State of Iowa; Disaster Loan Areas

As a result of the President's major disaster declaration on June 19, 2002, I find that Allamakee, Benton, Buchanan, Cedar, Clayton, Clinton, Delaware, Dubuque, Fayette, Iowa, Jackson, Johnson, Jones, Linn, Muscatine, Scott and Winneshiek Counties in the State of Iowa constitute a disaster area due to damages caused by severe storms and flooding occurring on June 3, 2002 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 18, 2002 and for economic injury until the close of business on March 19, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

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: Black Hawk, Bremer, Chickasaw, Howard, Keokuk, Louisa, Poweshiek, Tama and Washington Counties in the State of Iowa; Carroll, Jo Daviess, Rock Island

and Whiteside Counties in the State of Illinois; Houston and Fillmore counties in the State of Minnesota; Crawford, Grant and Vernon counties in the State of Wisconsin.

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 342511. For economic injury the number is 9Q2700 for Iowa; 9Q2800 for Illinois; 9Q2900 for Minnesota; and 9Q3000 for Wisconsin.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 19, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02–16055 Filed 6–25–02; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3409]**

### Commonwealth of Virginia, (Amendment # 2); Disaster Loan Areas

In accordance with a notice received from the Federal Emergency Management Agency, dated June 17, 2002, the above numbered declaration is hereby amended to include Halifax, Pittsylvania, Prince George, Scott and Wise Counties and the Independent City of Emporia in the Commonwealth of Virginia as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring on April 28, 2002 through May 3, 2002.

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 previously designated location: Charles City, Chesterfield, Henry, Lee, Mecklenburg, Surry and Washington Counties in Virginia; Harlan and Letcher Counties in Kentucky; Caswell, Granville, Person and Rockingham County in North Carolina; and Hancock, Hawkins and Sullivan Counties in Tennessee.

The economic injury number assigned to Tennessee is 9Q1800.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 4, 2002, and for economic injury the deadline is February 5, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 19, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02–16053 Filed 6–25–02; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

### Mount Rainier Scenic Railroad

[Docket Number FRA–2002–12270]

The Mount Rainier Scenic Railroad, on behalf of Mr. Chris Baldo, seeks a waiver of compliance number FRA–2002–12270, with the *Inspection and Maintenance Standards for Steam Locomotives,* 49 CFR part 230, published November 17, 1999. Section 230.51 of the standards requires that each steam locomotive be equipped with two water glasses. The Mount Rainier Scenic Railroad seeks this waiver for one locomotive number MCL Co. 7 which is equipped with only one water glass and tri cocks. Mount Rainier Scenic Railroad indicates that the locomotive was rebuilt June 2001, and there is insufficient room to install the second water glass. The locomotive is currently stored at the Roots of Motive Power Museum, at Willits, CA. If the request is approved the locomotive would be operated over the California Western Railroad.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2002–12270 ) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl-401, Washington, DC. 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on June 19, 2002.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 02–16044 Filed 6–25–02; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Supplemental Draft Environmental Impact Statement for the Central Florida Light Rail Transit System Project in Orlando, Florida Metropolitan Area

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Notice of intent to prepare a Supplemental Draft Environmental Impact Statement (SDEIS).

**SUMMARY:** The Federal Transit Administration (FTA) as lead agency in cooperation with the Federal Highway Administration (FHWA), and the Central Florida Regional Transportation Authority (CFRTA, locally known as LYNX), in conjunction with METROPLAN ORLANDO, and the Florida Department of Transportation (FDOT) intend to conduct scoping meetings and prepare a Supplemental Draft Environmental Impact Statement (SDEIS) in accordance with the National

Environmental Policy Act (NEPA) for the proposed Central Florida Light Rail Transit System Project in Orange and Seminole Counties, Florida. Scoping activities will solicit input into the range of alternatives and social, economic, or environmental impacts to be evaluated in the SDEIS.

This Notice of Intent is being published at this time to notify interested parties and invite participation in the study due to the changes in the light rail transit alignment (including line, station locations and support facilities) that have occurred since the initial Notice of Intent (October 8, 1996), publication of the Central Florida Light Rail Transit System North/South Corridor Project DEIS (1997), and publication of the Central Florida Light Rail Transit System North/South Corridor Project FEIS as supplemented (1999). The new alignment is located generally within or adjacent to the Interstate 4 right-of-way and along the planned Kirkman Road extension (*see* Study Area below).

The following alternatives will be evaluated in the SDEIS: (1) A baseline alternative consisting of measures to implement more efficient management of the current transit infrastructure, with an emphasis on operating improvements, in addition to those projects listed in the Long Range Cost Feasible Plan and/or the Transportation Improvement Plan, and (2) the locally preferred light rail transit alignment (including line, station locations and support facilities).

Scoping will be accomplished through correspondence with interested persons, organizations, and Federal, State and local agencies, and through public meetings.

**DATES:** Scoping Meetings: A series of public meetings will be held to receive comments on the scoping document for the project, including the following dates, locations and times:

July 9, 2002 4 p.m.–7 p.m., Altamonte Springs City Council Chambers, 225 Newburyport Ave., Altamonte Springs, FL 32701.

July 10, 2002 4 p.m.–7 p.m., Rosen Centre Hotel, 9840 International Drive, Orlando, FL 32819.

July 11, 2002 4 p.m.–7 p.m., Orlando City Council Chambers (2nd Floor), 400 S. Orange Avenue, Orlando, FL 32802.

July 16, 2002 4 p.m.–7 p.m., Maitland City Council Chambers, 1776 Independence Lane, Maitland, FL 32751.

July 17, 2002 4 p.m.–7 p.m., Orange County Public Works Building, 4200 South John Young Parkway, Orlando, FL 32839.

All meeting locations are accessible to persons with disabilities. In accordance with the Americans With Disabilities Act of 1990, persons needing a special accommodation at this meeting because of a disability or physical impairment should contact Ron Jones at LYNX, (407) 841–2279, at least 48 hours before the meeting. If hearing impaired, contact LYNX at (407) 423–0787(TDD).

*Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to Tony Walter at LYNX, 445 West Amelia Street, Suite 800, Orlando, Florida, 32801 by August 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Tony Walter, Project Manager for LYNX, (407) 841–2279, EXT. 3007. You may also contact Mr. Derek Scott, Community Planner, Federal Transit Administration, Region IV, 61 Forsyth Street, SW, Suite 17T50, Atlanta, Georgia 30303. Telephone: (404) 562–3500.

**SUPPLEMENTARY INFORMATION:**

**1. Notice of Intent**

This Notice of Intent to prepare a Supplemental DEIS is being published at this time to notice interested parties due to the changes that have occurred since the initial Notice of Intent (October 8, 1996), publication of the Central Florida Light Rail Transit System North/South Corridor Project DEIS (1997), and publication of the Central Florida Light Rail Transit System North/South Corridor Project FEIS as supplemented (1999). The Central Florida Light Rail Transit System Project is re-examining light rail transit alignment alternatives within the study area (see Study Area below). FTA regulations and guidance will be used for the analysis and preparation of the Central Florida Light Rail Transit System Project SDEIS.

*I. Scoping*

The FTA, LYNX, METROPLAN ORLANDO, and FDOT invite written comments for a period of 45 days after publication of this notice (see DATES above). During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated. Comments should focus on the scope of alternatives and impacts to be considered, and not on a preference for a particular alternative. Individual preference for a particular alternative should be communicated during the comment period for the Supplemental DEIS, subsequent to the completion of the scoping document.

Persons who wish to receive information prior to a scoping meeting, or to be placed on the mailing list to receive further information as the project continues may contact Tony Walter at LYNX, 445 West Amelia Street, Suite 800, Orlando, Florida, 32801.

*II. Study Area and Transportation Need*

The proposed project consists of an approximately 20 mile total light rail transit system, linking the Central Parkway in Altamonte Springs to the north, through Downtown Orlando and central Orange County, to the proposed Canadian Court Intermodal Center in the south. The locally preferred light rail transit alignment, as adopted by the METROPLAN ORLANDO Board in May 2002, extends from Central Parkway in Altamonte Springs and crosses over I–4 from Altamonte Springs to Maitland. South of Maitland Center, it crosses over to the east side of I–4 at Fairbanks Avenue, south along Dade Avenue at-grade, on King Street and easterly on Sanitarium Road, south over CSX and Princeton Street. The alignment is at-grade along a reconstructed Alden Road to Orange Avenue to the Regional Intermodal Center (RIC) on Amelia Street.

The alignment from the RIC through Downtown Orlando is still under study. Option 1 extends to the west of Downtown Orlando and Option 2 extends south along Garland Avenue. Once the alignment leaves Downtown Orlando, it extends west in the median of I–4 and extends directly to Universal Studios, or extends directly south on Kirkman Road, over Sand Lake Road along the planned Kirkman Road extension, west to the proposed Canadian Court Intermodal Center.

Possible additional extensions along International Drive, to Sea World, and to Orlando International Airport will be considered.

Transportation improvements within the North/South corridor are needed to accommodate excess travel demand resulting from current and projected growth in population and employment. This light rail transit alignment provides the opportunity to connect the following proposed intermodal stations: the Altamonte Springs Intermodal Center, the Maitland Intermodal Center, the Regional Intermodal Center (RIC) in Downtown Orlando, the Belz Intermodal Center, and the Canadian Court Intermodal Center, at a minimum.

*III. Alternatives*

The alternatives proposed for evaluation include:

(1) A baseline alternative consisting of measures to implement more efficient management of the current transit infrastructure, with an emphasis on operating improvements, in addition to those projects listed in the Long Range Cost Feasible Plan and/or the Transportation Improvement Plan, and

(2) The locally preferred light rail transit alignment (including line, station locations and support facilities).

*IV. Probable Effects*

FTA, LYNX, METROPLAN ORLANDO and FDOT will evaluate the project's potential for significant adverse impacts during both construction and operation, and to identify feasible mitigation measures for those impacts. The specific analyses to be included are land use, neighborhood character, and social conditions, economic conditions and displacement, visual and aesthetic considerations, historic resources, archaeological resources, transit (ridership, operations and maintenance), traffic, parking, air quality, noise and vibration, energy, hazardous materials, water quality, natural resources (vegetation and wildlife), construction and construction impacts, cumulative impacts, and environmental justice (disproportionate adverse impacts on minority and low-income populations). Additional potential effects will be solicited during scoping activities and considered for inclusion in the SDEIS.

Issued on: June 20, 2002.

**Jerry Franklin,**

*Regional Administrator.*

[FR Doc. 02–16131 Filed 6–25–02; 8:45 am]

**BILLING CODE 4910–57–P**

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Surety Companies Acceptable on Federal Bonds: Termination—Republic Western Insurance Company

**AGENCY:** Financial Management Service, Fiscal Service, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** This is Supplement No. 26 to the Treasury Department Circular 570; 2001 Revision, published July 2, 2001 at 66 FR 35024.

**FOR FURTHER INFORMATION CONTACT:** Surety Bond Branch at (202) 874–6507.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9808, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 66 FR 35052, July 2, 2001.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: June 17, 2002.

**Judith R. Tillman,**

*Assistant Commissioner, Financial Operations, Financial Management Service.*

[FR Doc. 02–16039 Filed 6–25–02; 8:45 am]

**BILLING CODE 4810–35–M**

# Corrections

**Federal Register**

Vol. 67, No. 123

Wednesday, June 26, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (02–075)]**

### National Environmental Policy Act; Final Environmental Assessment for Launch of NASA Routine Payloads on Expendable Launch Vehicles from Cape Canaveral Air Force Station Florida and Vandenberg Air Force Base California

*Correction*

In notice document 02–15348 beginning on page 41525 in the issue of Tuesday, June 18, 2002, make the following correction:

On page 41525, in the third column, in the fourth through seventh lines, the web address should read, ''*http://spacescience.nasa.gov/admin/pubs/routine__EA/index.htm*''.

[FR Doc. C2–15348 Filed 6–25–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

**Wednesday,**
**June 26, 2002**

## Part II

# Department of Housing and Urban Development

**24 CFR Part 50, et al.**
**Environmental Review Procedures for Entities Assuming HUD's Environmental Responsibilities; Proposed Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 50, 58, 574, 582, 583, and 970**

**[Docket No. FR–4523–P–01]**

**RIN 2501–AC64**

## Environmental Review Procedures for Entities Assuming HUD's Environmental Responsibilities

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would update the list of programs and statutory authorities for which other entities may assume HUD's environmental responsibilities, and make other changes to update the regulation on assumption of HUD's environmental responsibilities. Also, the proposed rule would make conforming changes to the affected environmental provisions contained in various program regulations.

**DATES:** *Comment Due Date:* August 26, 2002.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Richard H. Broun, Director, Office of Community Viability, Office of Community Planning and Development, Room 7240, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000. For inquiry by phone or e-mail: contact Walter Prybyla, Deputy Director for Policy, Environmental Review Division, Office of Community Planning and Development, at (202) 708–1201, Ext. 4466 (this is not a toll-free number), or e-mail: *WalterPrybyla@hud.gov*. Hearing-impaired or speech-impaired individuals may access the voice telephone number listed above by calling the Federal information relay service during working hours at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** This proposed rule would make a number of changes to HUD regulations in 24 CFR part 58. Part 58 implements statutory authorities that permit certain entities other than HUD to assume HUD's environmental responsibilities for various HUD programs. HUD proposes to update the list of programs and statutory authorities covered by part 58. Also, the proposed rule would make conforming changes to environmental provisions in certain program regulations to include a cross-reference to part 58. In addition, the proposed rule would make conforming changes in HUD's regulations in 24 CFR part 50, which governs when HUD is responsible to perform environmental responsibilities in accordance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and other environmental requirements (as specified in 24 CFR 50.4).

The following additional programs would be added to the list in § 58.1:

(1) Grants provided to private nonprofit organizations and housing agencies under the Supportive Housing Program and the Shelter Plus Care Program (in accordance with section 443 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11402), as amended by section 208 of the HUD Appropriations Act for FY 2001 (Pub. L. 106–377, approved October 27, 2000)). Section 443 was amended to provide for assumption of environmental responsibilities by a State or unit of general local government regardless of whether or not it is the recipient. The rule would reflect prospective part 58 coverage of grants to nonprofit organizations and housing agencies, i.e., coverage of such grants for Fiscal Year (FY) 2001 and later;

(2) Assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 *et seq.*), (in accordance with section 105 of NAHASDA);

(3) Indian housing loan guarantees under section 184 of the Housing and Community Development Act of 1992 (1992 Act) (12 U.S.C. 1715z–13a, in accordance with section 184(k) of the 1992 Act);

(4) HOPE VI grants for FY 1999 and earlier (in accordance with the HUD Appropriations Act for FY 1999 (Pub. L. 105–276, approved October 21, 1998)). Section 58.1 also would be amended to reflect amendments to the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*), including amendments that make permanent the HOPE VI program and thus make section 26 of the United States Housing Act of 1937 the permanent authority for States and units of general local government to assume environmental responsibilities for the HOPE VI program;

(5) Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C.12901 *et seq.*) grants. Section 203(c) of the HUD Appropriations Act for FY 2001 (Pub. L. 106–377, approved October 27, 2000) added section 856(h) of the AIDS Housing Opportunity Act, which provides permanent authority for HOPWA grantees to assume environmental responsibilities. Section 207(c) of HUD's Appropriations Act for FY 1999 instructed HUD to treat HOPWA grants for FY 1999 and prior years as assistance for special projects subject to section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (42 U.S.C. 3547), and subject to HUD's regulations implementing that section at 24 CFR part 58. The HUD Appropriations Act for FY 2000 (Pub. L. 106–74, approved October 20, 1999) extended section 207(a) and (b) of the 1999 Act to apply to FY 2000 grants, but did not extend section 207(c).

Accordingly, part 58 applies to environmental reviews for all HOPWA grants entered into after enactment of section 856(h) of HOPWA and all HOPWA grants for FY 1999 and prior years. Part 58 also applies to HOPWA formula grants for FY 2000, but does not apply to HOPWA competitive grants for FY 2000, which by their terms are not subject to subsequent changes in the HOPWA legislation. The amendment to § 58.1 would reflect this applicability.

The Rental Rehabilitation Program and the Housing Development Grant Program authorized by section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) are no longer in use and would be removed from paragraph (b)(2) of the list in § 58.1. The authority for these programs was repealed by the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 *et seq.*). References to these programs would be removed from §§ 58.4(b)(2), 58.4(b)(3), 58.5(a)(i), 58.17, and 58.18.

A new § 58.1(c) also would be added to clarify that activities assisted with repayments to a revolving loan fund initially assisted with HUD funds are subject to environmental requirements only if HUD program rules treat the activity assisted with repayments as being subject to Federal requirements.

A new § 58.1(d) would clarify that the Assistant Secretary for Community Planning and Development, to the extent permitted by applicable laws and the regulations of the Council on Environmental Quality, may, for good cause and with appropriate conditions,

approve waivers and exceptions or establish criteria for exceptions from the requirements of this part.

Changes would be made to the definitions section, § 58.2. Obsolete references to Indian Housing Authorities would be removed from the definition of ''recipient'' and the Indian tribe would be defined as the ''recipient'' for part 58 purposes with respect to assistance awarded under NAHASDA and the Section 184 Indian Housing Loan Guaranty program (Section 184 program). The specification of the Indian tribe as the ''recipient'' for these two programs is for part 58 purposes only. The revision reflects the Indian tribe's role in the part 58 process under section 105 of NAHASDA and the Section 184 program and would not affect the definition of ''recipient'' in 24 CFR part 1000 and section 4 of NAHASDA.

Further, the definition of ''responsible entity'' (RE) would be revised to clarify that the Indian tribe is the RE under NAHASDA whether or not a Tribally Designated Housing Entity is authorized to receive funds on behalf of the tribe and is also the RE under the Section 184 program. This definition also would state that Regional Corporations in Alaska are considered Indian tribes. The inclusion of Regional Corporations as Indian tribes reflects their specific inclusion in the definition of ''Indian tribe'' in section 4 of NAHASDA.

A new § 58.4(c) would clarify that under NAHASDA and the Section 184 program, Indian tribes have a choice whether or not to assume environmental responsibilities under part 58. This provision conforms to NAHASDA rules that were adopted through negotiated rulemaking (24 CFR 1000.20).

The list of NEPA-related environmental authorities in § 58.5 would be updated by replacing a reference to an obsolete HUD notice on toxic chemicals and radioactive materials with updated requirements regarding contamination. The new requirements would be similar to those identified in 24 CFR 50.3(i), which apply when HUD performs the environmental review for a project. The new provision would reflect a general HUD policy that regardless of whether the environmental reviews are performed by HUD or by the responsible entity, the same standards would be used. The proposed provision would state HUD's policy that property proposed for use in HUD programs must be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants of the property or conflict with the intended utilization of the property.

Environmental reviews for multifamily housing with five or more units (including leasing) and non-residential property must include evaluation of previous site uses and other evidence of contamination on or near the site. The entity responsible for compliance with part 58 must give particular attention to any proposed site on or in the general proximity of areas that contain or may have contained hazardous waste, such as dumps, landfills, and industrial sites. This provision relies on a general performance standard, which could include a Phase I environmental assessment for toxics (American Society for Testing Materials, ASTM E 1527). Some HUD programs already require a Phase I report, which is a standard of private real estate transactions.

Section 58.11 (pertaining to legal capacity and performance) is revised to exclude the term ''Indian housing'' recipient and add the term ''HOPWA'' recipient. This section allows recipients that are not a responsible entity to object to the performance of the environmental review by a responsible entity on the basis of performance, timing, or compatibility of objectives. In such a case, HUD will review the facts to determine who will perform the environmental review.

The current provisions of § 58.22(a) would be revised and placed in paragraphs (a) through (c). The new provisions would make it clear that all participants in the development process are subject to the provisions of this part.

The proposed provisions would clarify that the limitations on activities apply not only to recipients, but also to other project participants, such as public or private nonprofit or for-profit entities and their contractors. The provisions also would make it clear that undertaking an activity that would have adverse environmental impact or limit the choice of alternatives, as well as committing non-HUD funds to such an activity, is prohibited before the request for release of funds and environmental certification have been approved.

New paragraph (c) would require that, if a recipient is considering an application from a prospective sub-recipient or beneficiary and is aware that the applicant is about to take an action within the recipient's jurisdiction that is prohibited by § 58.22(a), the recipient shall promptly notify the applicant that the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved. This latter provision is based on provisions in the NEPA regulations of the Council on Environmental Quality (40 CFR 1506.1(b)). The Department is concerned that there have been situations in which the environmental review process has been impaired where private participants have undertaken choice-limiting actions on pending projects with the apparent acquiescence or encouragement of recipients. These revisions would clarify that until the environmental review process and release of funds process are completed, participants other than recipients are expected to adhere to limitations on permissible actions. Further, recipients have a responsibility to respond when they are aware that an applicant is taking a prohibited action.

In addition, a new paragraph would be added to § 58.22 to reflect a statutory amendment that permits an organization, consortium, or affiliate under the Self-Help Homeownership Opportunity Program (SHOP) to advance nongrant funds to acquire land prior to completion of the environmental review process. Section 202(b) of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569, approved December 27, 2000) amended section 11(d)(2)(A) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note) to provide that eligible expenses under the SHOP program ''may include reimbursing an organization, consortium, or affiliate upon approval of any required environmental review, for nongrant amounts of the organization, consortium, or affiliate advanced before such a review to acquire land.'' This amendment permits SHOP recipients to advance nongrant amounts to acquire land before completion of the environmental review process and be reimbursed from grant amounts. However, such advances are incurred at the recipient's risk, and the Department is not under any obligation to reimburse a recipient for these acquisition costs if the subsequent environmental review is unfavorable and the land is deemed unsuitable to carry out the SHOP project. The Department also notes that advancing nongrant funds for land acquisition prior to approval of a request for release of funds is generally considered a choice-limiting action that is prohibited under § 58.22. The new provision would reflect a statutory exception to this prohibition that applies only under the SHOP program. All other forms of HUD assistance continue to have the more restrictive policy.

The proposed rule would revise the first sentence of § 58.33(b) concerning when and how the pre-submission

comment periods for the Notice of Finding of No Significant Impact (FONSI Notice) and/or the Notice of Intent to Request a Release of Funds (NOI/RROF) may be combined with the post-submission comment period for the Request for Release of Funds (RROF). Under the proposed rule, the combined procedure could be used if funds are needed on an emergency basis due to a locally declared emergency as well as during a Presidentially declared disaster, and there is immediate need for public action to protect public safety.

Three of the NEPA categorical exclusions in § 58.35 would be revised and one new exclusion would be added. With respect to rehabilitation, the rule would be revised to clarify that the categorical exclusion for minor rehabilitation applies to single-family dwellings as well as to multifamily buildings. The rule would add a reference to ''single-family'' residential buildings (with one to four dwelling units), whose unit density is not increased beyond four units, and whose dwelling units do not result from a conversion of use from a non-residential use. The rule also would indicate that the exclusion for an individual action on a one-to four-family dwelling would apply when there are no more than four dwelling units on any one site, whether in one or multiple buildings. This rulemaking includes conforming changes to 24 CFR part 50 pertaining to the proposed revision for the exclusions for rehabilitation and individual actions.

New § 58.35(b)(7) would exclude from NEPA and non-NEPA environmental requirements the approval of supplemental assistance (including insurance or guarantee) to complete a project previously approved under this part, if the project or activities have already been environmentally assessed by the same responsible entity, unless a reevaluation of the environmental findings is required under § 58.47(a). This statement of policy is new to this part and would conform this part to the long-held HUD policy stated at 24 CFR 50.36, when HUD itself performs the environmental responsibilities. Also, the exclusion for acquisition of an existing structure or vacant land to be retained for the same use would be revised to clarify that acquisition includes leasing, and a conforming change would be made to 24 CFR part 50. The homeownership assistance exclusion in § 58.35(b)(5) covers dwelling units under construction as well as existing units, while the similar exclusion in § 50.19(b)(5) covers only existing construction; therefore, this rule amends § 50.19(b)(5) to cover units under construction.

Sections 58.34(b) and 58.35(d) would be revised to clarify that the responsible entity's documentation of exemptions and exclusions must be made prior to committing funds for or undertaking the exempt or excluded activities.

In § 58.45, revised language would clarify that the periods provided for certain public comment periods are minimum required periods. Section 58.45 also has been reformatted into a chart for easier reading.

Sections 58.72 and 58.75 would be revised to conform to the changes proposed in § 58.22 ''Limitations on actions pending clearance.''

The Department also proposes to add language to certain program regulations for programs that are subject to part 58 procedures. They are part 574 (Housing Opportunities for Persons with AIDS or HOPWA), part 582 (Shelter Plus Care), part 583 (Supportive Housing Program), and part 970 (Public Housing Program—Demolition or Disposition of Public Housing Projects). The added language makes conforming amendments for certain program regulations that do not currently adequately reflect the applicability of part 58 procedures.

**Findings and Certifications**

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–5000.

*Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose a Federal mandate on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are not any unusual procedures that would need to be complied with by small entities. Although HUD has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

*Executive Order 13132, Federalism*

This proposed rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

**List of Subjects in 24 CFR**

*Part 58*

Environmental protection, Community Development Block Grants, Public Housing Capital Fund Grants, HOPE VI Program Grants, Indian Housing Block Grants, HOME Investment Partnerships Grants, Housing Opportunities for Persons with AIDS Grants, Shelter Plus Care Grants, Supportive Housing Program Grants, Self-Help Homeownership Opportunity Program Grants, Environmental Impact Statements, Environmental Assessments, Grant programs—housing and community development, Reporting and recordkeeping requirements.

*Part 574*

AIDS, Community facilities, Disabled, Emergency shelter, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

*Part 582*

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

*Part 583*

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing

and community development, Supportive services.

*Part 970*

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers are 14.235, 14.238, 14.241, 14.850, and 14.866.

Accordingly, for the reasons described in the preamble, the Department proposes to amend 24 CFR parts 50, 58, 574, 582, 583, and 970 as follows:

## PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for part 50 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 4332; and Executive Order 11991, 3 CFR, 1977 Comp., p. 123.

2. Amend § 50.19 by revising paragraph (b)(15) to read as follows:

**§ 50.19 Categorical exclusions not subject to the Federal laws and authorities cited in § 50.4.**

* * * * *

(b) * * *

(15) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and downpayment assistance, interest buydowns, and similar activities that result in the transfer of title.

* * * * *

3. Amend § 50.20 by revising paragraphs (a)(2), (a)(3), and (a)(4), to read as follows:

**§ 50.20 Categorical exclusions subject to the Federal laws and authorities cited in § 50.4.**

(a) * * *

(2) Rehabilitation of buildings and improvements when the following conditions are met:

(i) In the case of single-family buildings (with one to four units), unit density is not increased beyond four units and the dwellings do not result from a conversion of use from a non-residential use;

(ii) In the case of multifamily residential buildings:

(A) Unit density is not changed more than 20 percent;

(B) The project does not involve changes in land use from non-residential to residential or from residential to non-residential; and

(C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

(iii) In the case of non-residential structures, including commercial, industrial, and public buildings:

(A) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and

(B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

(3)(i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or

(ii) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.

(4) Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.

* * * * *

## PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

4. The authority citation for part 58 is revised to read as follows:

**Authority:** 12 U.S.C. 1707 note, 1715z–13a(k); 25 U.S.C. 4115; 42 U.S.C. 1437x, 3535(d), 3547, 4332, 4852, 5304(g), 11402, 12838, and 12905(h); title II of Pub. L. 105–276; E.O. 11514 as amended by E.O. 11991, 3 C.F.R. 1977 Comp. p 123.

5. Amend § 58.1 as follows:

a. Removing paragraph (b)(2) and designating it as ''reserved'';

b. Redesignating paragraph (b)(3) as paragraph (b)(3)(i) and revising newly redesignated paragraph (b)(3)(i);

c. Adding paragraph (b)(3)(ii);

d. Revising paragraph (b)(6);

e. Removing ''and'' at the end of paragraph (b)(8);

f. Replacing the period at the end of paragraph (b)(9) with a semicolon; and

g. Adding new paragraphs (b)(10), (11), (12), (c), and (d).

The revisions and additions read as follows:

**§ 58.1 Purpose and applicability.**

* * * * *

(b) * * *

(2) [Reserved]

(3)(i) Grants to States and units of general local government under the Emergency Shelter Grant Program, Supportive Housing Program (and its predecessors, the Supportive Housing Demonstration Program (both Transitional Housing and Permanent Housing for Homeless Persons with Disabilities) and Supplemental Assistance for Facilities to Assist the Homeless), Shelter Plus Care Program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing Assistance, authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

(ii) Grants beginning with fiscal year 2001 to private nonprofit organizations and housing agencies under the Supportive Housing Program and Shelter Plus Care Program authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

* * * * *

(6)(i) Public Housing Programs under Title I of the United States Housing Act of 1937, including HOPE VI grants authorized under section 24 of the Act for fiscal year 2000 and later, in accordance with section 26 (42 U.S.C. 1437x);

(ii) Grants for the revitalization of severely distressed public housing (HOPE VI) for fiscal year 1999 and prior years, in accordance with Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998); and

(iii) Assistance administered by a public housing agency under section 8 of the United States Housing Act of 1937, except for assistance provided under part 886 of this title, in accordance with section 26 (42 U.S.C. 1437x);

* * * * *

(10) Assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), in accordance with section 105 (25 U.S.C. 4115);

(11) Indian Housing Loan Guarantees authorized by section 184 of the Housing and Community Development Act of 1992, in accordance with section 184(k) (12 U.S.C. 1715z–13a(k)); and

(12) Grants for Housing Opportunities for Persons with AIDS (HOPWA) under the AIDS Housing Opportunity Act, as follows: competitive grants beginning with fiscal year 2001 and all formula

grants, in accordance with section 856(h) (42 U.S.C. 12905(h)); all grants for fiscal year 1999 and prior years, in accordance with section 207(c) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998).

(c) When HUD assistance is used to help fund a revolving loan fund that is administered by a recipient or another party, the activities initially receiving assistance from the fund are subject to the requirements in this part. Future activities receiving assistance from the revolving loan fund, after the fund has received loan repayments, are subject to the environmental review requirements if the rules of the HUD program that initially provided assistance to the fund continue to treat the activities as subject to the Federal requirements. If the HUD program treats the activities as not being subject to any Federal requirements, then the activities cease to become Federally funded activities and the provisions of this part do not apply.

(d) To the extent permitted by applicable laws and the applicable regulations of the Council on Environmental Quality, the Assistant Secretary for Community Planning and Development may, for good cause and with appropriate conditions, approve waivers and exceptions or establish criteria for exceptions from the requirements of this part.

6. Amend § 58.2 as follows:

a. Revising paragraph (a)(5)(v);

b. Removing ''and'' at the end of paragraph (a)(5)(vii);

c. Adding new paragraphs (a)(5)(ix) and (x);

d. Revising paragraphs (a)(6) and (a)(7), introductory text, (a)(7)(i), and (a)(7)(ii), introductory text;

e. Removing paragraphs (a)(7)(ii)(D) and (E).

The revisions and additions read as follows:

**§ 58.2 Terms, abbreviations and definitions.**

(a) * * *

(5) * * *

(v) With respect to Public Housing Programs under § 58.1(b)(6)(i), fiscal year 1999 and prior HOPE VI grants under § 58.1(b)(6)(ii) or Section 8 assistance under § 58.1(b)(6)(iii), a public housing agency;

* * * * *

(vii) With respect to the FHA Multifamily Housing Finance Agency Pilot Program under § 58.1(b)(8), a qualified housing finance agency;

(viii) With respect to the Self-Help Homeownership Opportunity Program under § 58.1(b)(9), any direct grantee of HUD;

(ix) With respect to NAHASDA assistance under § 58.1(b)(10) and the Section 184 Indian Housing Loan Guarantee program under § 58.1(b)(11), the Indian tribe.

(x) With respect to the Shelter Plus Care and Supportive Housing Programs under § 58.1(b)(3)(ii), nonprofit organizations and other entities.

(6) *Release of funds.* In the case of the FHA Multifamily Housing Finance Agency Pilot Program under § 58.1(b)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and Request for Release of Funds refers to a recipient's request for a firm approval letter. In the case of the Section 184 Indian Housing Loan Guarantee program under § 58.1(b)(11), Release of Funds refers to HUD's issuance of a commitment to guarantee a loan, or if there is no commitment, HUD's issuance of a certificate of guarantee.

(7) *Responsible Entity.* Responsible Entity means:

(i) With respect to environmental responsibilities under programs listed in § 58.1(b)(1), (2), (3)(i), (4), and (5), a recipient under the program.

(ii) With respect to environmental responsibilities under the programs listed in § 58.1(b)(3)(ii) and (6) through (12), a State, unit of general local government, Indian tribe or Alaska Native Village, when it is the recipient under the program. Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) listed in § 58.1(b)(10), the Indian tribe is the responsible entity whether or not a Tribally Designated Housing Entity is authorized to receive grant amounts on behalf of the tribe. The Indian tribe is also the responsible entity under the Section 184 Indian Housing Loan Guarantee program listed in § 58.1(b)(11). Regional Corporations in Alaska are considered Indian tribes in this part. Non-recipient responsible entities are designated as follows:

* * * * *

7. Amend § 58.4 as follows:

a. Revising paragraph (b)(2);

b. Removing paragraph (b)(3); and

c. Adding a new paragraph (c).

The revision and addition read as follows:

**§ 58.4 Assumption authority.**

* * * * *

(b) * * *

(2) States must exercise HUD's responsibilities in accordance with § 58.18, with respect to approval of a unit of local government's environmental certification and RROF for a HUD assisted project funded through the State. Approval by the State of a unit of local government's certification and RROF satisfies the Secretary's responsibilities under NEPA and the related laws cited in § 58.5.

(c) *Particular responsibilities of Indian tribes.* An Indian tribe may, but is not required to, assume responsibilities for environmental review, decision-making and action for programs authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) or section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a). The tribe must make a separate decision regarding assumption of responsibilities for each of these Acts and communicate that decision in writing to HUD. If the tribe assumes these responsibilities, the requirements of this part shall apply. If a tribe formally declines assumption of these responsibilities, they are retained by HUD and the provisions of part 50 of this title apply.

8. Amend § 58.5 by revising paragraphs (a)(1) and (i) to read as follows:

**§ 58.5 Related Federal laws and authorities.**

* * * * *

(a) *Historic properties.* (1) The National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), particularly sections 106 and 110 (16 U.S.C. 470 and 470h–2).

* * * * *

(i) *HUD environmental standards.* (1) Applicable criteria and standards specified in part 51 of this title, other than the runway clear zone notification requirement in § 51.303(a)(3). Also, it is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

(2) The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to assure that the occupants of proposed sites are not adversely affected by any of the hazards listed in § 58.5(i)(1).

(3) Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.

(4) The responsible entity shall use current techniques by qualified professionals to undertake investigations determined necessary.

* * * * *

9. Revise § 58.10 to read as follows:

**§ 58.10 Basic environmental responsibility.**

In accordance with the provisions of law cited in § 58.1(b), except as otherwise provided in § 58.4(c), the responsible entity must assume the environmental responsibilities for projects under programs cited in § 58.1(b). In doing so, the responsible entity must comply with the provisions of NEPA and the CEQ regulations contained in 40 CFR parts 1500 through 1508, including the requirements set forth in this part.

10. Amend § 58.11 by revising paragraph (b) to read as follows:

**§ 58.11 Legal capacity and performance.**

* * * * *

(b) If a public housing, special project, HOPWA, Supportive Housing, Shelter Plus Care, or Self-Help Homeownership Opportunity recipient that is not a responsible entity objects to the non-recipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD will review the facts to determine who will perform the environmental review.

* * * * *

11. Remove and reserve § 58.17 to read as follows.

**§ 58.17 [Reserved]**

12. Revise § 58.18 to read as follows:

**§ 58.18 Responsibilities of States assuming HUD environmental responsibilities.**

States that elect to administer a HUD program shall ensure that the program complies with the provisions of this part. The State must:

(a) Designate the State agency or agencies that will be responsible for carrying out the requirements and administrative responsibilities set forth in subpart H of this part and which will:

(1) Develop a monitoring and enforcement program for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.

(2) Receive public notices, RROFs and certifications from recipients pursuant to §§ 58.70 and 58.71; accept objections from the public and from other agencies (§ 58.73); and perform other related responsibilities regarding releases of funds.

(b) Fulfill the State role in subpart H relative to the time period set for the receipt and disposition of comments, objections and appeals (if any) on particular projects.

13. Revise § 58.22 to read as follows:

**§ 58.22 Limitations on activities pending clearance.**

(a) Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in § 58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in § 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

(b) If a project or activity is exempt under § 58.34, or is categorically excluded (except in extraordinary circumstances) under § 58.35(b), no RROF is required and the recipient may undertake the activity immediately after the responsible entity has documented its determination as required in § 58.34(b) and § 58.35(d), but the recipient must comply with applicable requirements under § 58.6.

(c) If a recipient is considering an application from a prospective subrecipient or beneficiary and is aware that the prospective subrecipient or beneficiary is about to take an action within the jurisdiction of the recipient that is prohibited by § 58.22(a), then the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved.

(d) An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with this part and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project.

(e) *Self-Help Homeownership Opportunity Program (SHOP).* In accordance with section 11(d)(2)(A) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note), an organization, consortium, or affiliate receiving assistance under the SHOP program may advance nongrant funds to acquire land prior to completion of an environmental review and approval of an Request for Release of Funds (RROF) and certification, notwithstanding § 58.22(a). Any advances to acquire land prior to approval of the RROF and certification are made at the risk of the organization, consortium, or affiliate and reimbursement for such advances may depend on the result of the environmental review. This authorization is limited to the SHOP program only and all other forms of HUD assistance are subject to the limitations in paragraph (a) of this section.

(f) *Relocation.* Funds may be committed for relocation assistance before the approval of the RROF and related certification for the project provided that the relocation assistance is required by 24 CFR part 42.

14. Amend § 58.33 by revising paragraph (b) to read as follows:

**§ 58.33 Emergencies.**

* * * * *

(b) If funds are needed on an emergency basis and adherence to separate comment periods would prevent the giving of assistance during a Presidentially declared disaster, or during a local emergency that has been declared by the chief elected official of the responsible entity who has proclaimed that there is an immediate need for public action to protect the public safety, the combined Notice of FONSI and Notice of Intent to Request Release of Funds (NOI/RROF) may be disseminated and/or published simultaneously with the submission of the RROF. The combined Notice of FONSI and NOI/RROF shall state that the funds are needed on an emergency basis due to a declared disaster and that the comment periods have been combined. The Notice shall also invite commenters to submit their comments to both HUD and the responsible entity issuing the notice to assure that these comments will receive full consideration.

15. Amend § 58.34 by revising paragraph (b) to read as follows:

**§ 58.34 Exempt activities.**

* * * * *

(b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for

the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section. Documentation in the Environmental Review Record (ERR) must be made prior to the commitment of funds or undertaking any of the activities listed in § 58.34(a).

16. Amend § 58.35 as follows:

a. Redesignating paragraphs (a)(3)(i) and (a)(3)(ii) as paragraphs (a)(3)(ii) and (a)(3)(iii);

b. Adding a new paragraph (a)(3)(i);

c. Revising newly redesignated paragraph (a)(3)(ii)(B);

d. Revising paragraphs (a)(4) and (a)(5); and

e. Adding a new paragraph (b)(7) and adding a last sentence to the end of paragraph (d).

The additions and revisions read as follows:

**§ 58.35 Categorical exclusions.**

(a) * * *

(3) * * *

(i) In the case of single family residential buildings (with one to four units), unit density is not increased beyond four units and the dwellings do not result from a conversion of use from a non-residential use.

(ii) * * *

(A) * * *

(B) The project does not involve changes in land use from non-residential to residential or from residential to non-residential; and

(C) * * *

(4)(i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or

(ii) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.

(5) Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed or disposed of will be retained for the same use.

* * * * *

(b) * * *

(7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under § 58.47.

* * * * *

(d) Documentation in the ERR must be made prior to the commitment of funds or to undertaking any of the activities listed in § 58.35.

17. Revise § 58.45 to read as follows:

**§ 58.45 Public comment periods.**

Required notices must afford the public the following minimum comment periods, counted in accordance with § 58.21:

(a) Notice of Finding of No Significant Impact (FONSI): 15 days when published or, if no publication, 18 days when mailing and posting.

(b) Notice of Intent to Request Release of Funds (NOI–RROF): 7 days when published or, if no publication, 10 days when mailing and posting.

(c) Concurrent or combined notices: 15 days when published or, if no publication, 18 days when mailing and posting.

18. Amend § 58.72 by revising paragraph (b) to read as follows:

**§ 58.72 HUD or State actions on RROFs and certifications.**

* * * * *

(b) HUD (or the State) may disapprove a certification and RROF if it has knowledge that the responsible entity or other participants in the development process have not complied with the items in § 58.75, or that the RROF and certification are inaccurate.

* * * * *

19. Amend § 58.75 by revising paragraph (e) to read as follows:

**§ 58.75 Permissible bases for objections.**

* * * * *

(e) The recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by this part before release of funds and approval of the environmental certification by HUD (or the State).

* * * * *

## PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

20. The authority citation for part 574 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 12901–12912.

21. Revise § 574.510 to read as follows:

**§ 574.510 Environmental procedures and standards.**

(a) Activities under this part are subject to HUD environmental regulations in part 58 of this title, except that HUD will perform an environmental review in accordance with part 50 of this title for any competitive grant for fiscal year 2000.

(b) The recipient, its project partners and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until the responsible entity (as defined in § 58.2 of this title) has completed the environmental review procedures required by part 58 and the environmental certification and RROF have been approved (or HUD has performed an environmental review and the recipient has received HUD approval of the property). HUD will not release grant funds if the recipient or any other party commits grant funds (i.e., incurs any costs or expenditures to be paid or reimbursed with such funds) before the recipient submits and HUD approves its RROF (where such submission is required).

(c) For activities under a grant to a nonprofit entity that would generally be subject to review under part 58, HUD may make a finding in accordance with § 58.11(d) and may itself perform the environmental review under the provisions of part 50 of this title if the recipient nonprofit entity objects in writing to the responsible entity's (RE) performing the review under part 58. Irrespective of whether the RE in accord with part 58 (or HUD in accord with part 50) performs the environmental review, the recipient shall supply all available, relevant information necessary for the RE (or HUD, if applicable) to perform for each property any environmental review required by this part. The recipient also shall carry out mitigating measures required by the RE (or HUD, if applicable) or select alternate eligible property.

## PART 582—SHELTER PLUS CARE

22. The authority citation for part 582 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 11403–11407b.

23. Revise § 582.230 to read as follows:

**§ 582.230 Environmental review.**

(a) Activities under this part are subject to HUD environmental regulations in part 58 of this title, except that HUD will perform an

environmental review in accordance with part 50 of this title prior to its approval of any conditionally selected applications from PHAs for fiscal year 2000 and prior years for other than the SRO component. For activities under a grant to a PHA that generally would be subject to review under part 58, HUD may make a finding in accordance with § 58.11(d) and may itself perform the environmental review under the provisions of part 50 of this title if the recipient PHA objects in writing to the responsible entity's (RE) performing the review under part 58. Irrespective of whether the RE in accord with part 58 (or HUD in accord with part 50) performs the environmental review, the recipient shall supply all available, relevant information necessary for the RE (or HUD, if applicable) to perform for each property any environmental review required by this part. The recipient also shall carry out mitigating measures required by the RE (or HUD, if applicable) or select alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement (EIS).

(b) The recipient, its project partners and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until the responsible entity (as defined in § 58.2 of this title) has completed the environmental review procedures required by part 58 and the environmental certification and RROF have been approved or HUD has performed an environmental review under part 50 and the recipient has received HUD approval of the property. HUD will not release grant funds if the recipient or any other party commits grant funds (i.e., incurs any costs or expenditures to be paid or reimbursed with such funds) before the recipient submits and HUD approves its RROF (where such submission is required).

## PART 583—SUPPORTIVE HOUSING

24. The authority citation for part 583 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 11389.

25. Revise § 583.230 to read as follows:

### § 583.230 Environmental review.

(a) Activities under this part are subject to HUD environmental regulations in part 58 of this title, except that HUD will perform an environmental review in accordance with part 50 of this title prior to its approval of any conditionally selected applications for fiscal year 2000 and prior years that were received directly from private nonprofit entities and governmental entities with special or limited purpose powers. For activities under a grant that generally would be subject to review under part 58, HUD may make a finding in accordance with § 58.11(d) and may itself perform the environmental review under the provisions of part 50 of this title if the recipient objects in writing to the responsible entity (RE) performing the review under part 58. Irrespective of whether the RE in accord with part 58 (or HUD in accord with part 50) performs the environmental review, the recipient shall supply all available, relevant information necessary for the RE (or HUD, if applicable) to perform for each property any environmental review required by this part. The recipient also shall carry out mitigating measures required by the RE (or HUD, if applicable) or select alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement (EIS).

(b) The recipient, its project partners and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until the RE (as defined in § 58.2 of this title) has completed the environmental review procedures required by part 58 and the environmental certification and RROF have been approved or HUD has performed an environmental review under part 50 and the recipient has received HUD approval of the property. HUD will not release grant funds if the recipient or any other party commits grant funds (i.e., incurs any costs or expenditures to be paid or reimbursed with such funds) before the recipient submits and HUD approves its RROF (where such submission is required).

## PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS

26. The authority citation for part 970 continues to read as follows:

**Authority:** 42 U.S.C. 1437p and 3535(d).

27. Amend § 970.4 by revising paragraph (b), removing paragraph (c) and designating it as reserved, to read as follows:

### § 970.4 General requirements for HUD approval of applications for demolition or disposition.

* * * * *

(b) *Environmental review.* (1) Activities under this part are subject to HUD environmental regulations in part 58 of this title. However, HUD may make a finding in accordance with § 58.11(d) and may itself perform the environmental review under the provisions of part 50 of this title if a PHA objects in writing to the responsible entity (RE) performing the review under part 58.

(2) The PHA, its project partners and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until the responsible entity (as defined in § 58.2 of this title) has completed the environmental review procedures required by part 58 and the environmental certification and RROF have been approved or HUD has performed an environmental review under part 50 and has notified the PHA in writing of environmental approval of the property. HUD will not release grant funds if the recipient or any other party commits grant funds (i.e., incurs any costs or expenditures to be paid or reimbursed with such funds) before the recipient submits and HUD approves its RROF (where such submission is required).

(3) Irrespective of whether the RE in accord with part 58 (or HUD in accord with part 50) performs the environmental review, the PHA shall supply all available, relevant information necessary for the RE (or HUD, if applicable) to perform for each property any environmental review required by this part. The PHA also shall carry out mitigating measures required by the RE (or HUD, if applicable) or select alternate eligible property.

(4) Demolition or disposition (including any related replacement housing plan) will be aggregated in accordance with § 58.32 to meet the environmental review requirements. If the site of the replacement housing is unknown at the time of submission of the application for demolition or disposition, the application must contain a certification that the applicant agrees to assist the responsible entity to comply with part 58 (or HUD to comply with part 50, if applicable) of this title, and that the applicant shall obtain environmental clearance of the replacement housing in accordance with

procedures of part 58 (or part 50 if applicable) of this title.

(c) [Reserved]

* * * * *

Dated: May 28, 2002.

**Roy A. Bernardi,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 02–15881 Filed 6–25–02; 8:45 am]

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Wednesday, June 26, 2002

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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.

**S. 2431/P.L. 107–196**

Mychal Judge Police and Fire Chaplains Public Safety Officers' Benefit Act of 2002 (June 24, 2002; 116 Stat. 719)

**H.R. 3275/P.L. 107–197**

To implement the International Convention for the Suppression of Terrorist Bombings to strengthen criminal laws relating to attacks on places of public use, to implement the International Convention of the Suppression of the Financing of Terrorism, to combat terrorism and defend the Nation against terrorist acts, and for other purposes. (June 25, 2002; 116 Stat. 721)

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